Transcripts of Records

&

Blue Grass Bits

Vol.

Cases Nos. to

(19,246.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 194.

RIVERDALE COTTON MILLS, PETITIONER,

vs.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY AND HUGULEY MANUFACTURING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit begun on the third Monday of November, 1903, and held in the court room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.,
Appellants,
vs.
RIVERDALE COTTON MILLS, Appellee.
No. 1258.

Be it remembered that heretofore, to-wit: on the 25th day of May, 1903, a transcript of the record of the above styled cause from the circuit court of the United States for the northern district of Georgia was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following, to-wit:

1 *Bill of Complaint.*

UNITED STATES OF AMERICA.
Northern District of Georgia.

To the judges of the circuit court of the United States for the northern district of Georgia:

J. J. Robinson as trustee for the purposes hereinafter stated who avers himself to be a citizen of and residing in the State of Alabama brings this his bill against the Alabama & Georgia Manufacturing Company, a corporation created under and by virtue of the laws of the State of Georgia and a resident and citizen of said noorthern district of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia, and a resident and citizen of said State of Georgia and of the northern district of said State; and against W. T. Huguley, who your orator avers to be a citizen of said State of Georgia and residing within said northern district of Georgia.

And thereupon your orator complains and says: That on the 2d day of January, 1884, the said Alabama & Georgia Manufacturing Company executed and delivered to said W. T. Huguley, W. C.

Yancey and to your orator as trustees, a certain deed of trust covering and conveying to said persons named and to orator all the property of said Alabama & Georgia Manufacturing Company upon the terms and upon the trusts therein stated for the purpose of securing certain negotiable bonds of said company in principal sum of sixty-five thousand dollars and interest thereon, which deed of trust was accepted by said trustee and duly recorded. A copy of said deed of trust is hereto attached marked Exhibit A, as a part of this bill and for certainty as to its provisions the same is hereby referred to.

Said bonds herein named were duly issued by said Alabama & Georgia Manufacturing Company and sold or otherwise disposed of and are now held by various persons and corporations.

The said Alabama and Georgia Manufacturing Company is insolvent and has ceased to do business and has ceased to keep an office in West Point, Georgia, or elsewhere for the transaction of
2 business. That under and by virtue of a decree in chancery issuing out of the superior court of Troup county, Georgia at —— term, 1888, all the property of said Alabama and Georgia Manufacturing Company covered by said deed of trust was sold by the sheriff of Harris county, Georgia, on the 1st Tuesday in January, 1890, and purchased by certain persons who afterwards as orator is informed conveyed or otherwise disposed of the same to said Huguley Manufacturing Company, defendant herein. And said last named corporation is now in possession of the same, claiming the said property under said sale. Said sale was made subject in all respects to the rights and lien of your orator as trustee for the holders of said first mortgage bonds. Said W. T. Huguley, defendant herein and named as one of the trustees for said bondholders, claimed at the time of said sale to be interested in the purchase of said property and now claims also to be interested in the property and assets of said Huguley Manufacturing Company. He is interested adversely to your orator as the trustee of said bondholders. In said bond it is provided among other things as follows:

"And it is hereby expressly agreed by the said company with each and any holder of this bond that in case of the non-payment of any interest coupon hereto attached if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectable."

Among other things it is provided in said deed of trust for further security of the holders of said bonds and coupons that said Alabama and Georgia Manufacturing Company shall keep said property covered by said deed of trust insured against loss by fire in good responsible companies to the extent of sixty-five thousand dollars ($65,000). Said company has failed to keep said insurance as provided, as orator is informed.

The said Alabama and Georgia Manufacturing Company has failed to pay the interest on said bonds or a large majority of the —— falling due July 1, 1890, and has failed to pay any of the interest coupons falling due January 1, 1891, and more than six months has

elapsed since the said July coupons fell due and they still re-
3 main unpaid. No money was on deposit at the place of payment at the time said July coupons fell due and none deposited within six months thereafter at the place of payment to pay same, and all or nearly all of said July coupons remain unpaid, as orator is informed by the holders thereof.

The said W. C. Yancey has departed this life since the execution and delivery of said deed of trust.

Orator has been notified since the expiration of the six months after the said July coupons fell due by a majority of said bondholders in amount of their election to treat the whole of said principal sum named in the bonds as due under provisions of said bonds; and orator has been requested to begin proceedings to secure the property pledged for the payment of said indebtedness and he deems it to the best interest of the bondholders of said bonds that he should do so.

The premises considered the orator hereby waiving all discovery made under oath from each and all of said defendants he prays:

1st. That an account be taken of the holders of said bonds and the amount for principal and interest due them and each of them.

2nd. That orator may have a decree in his favor against the said The Alabama and Georgia Manufacturing Company; that it shall pay said sums so found to be due your orator as trustees for such bondholders, together with all costs of suit including his reasonald solicitors' fees by a short day to be named by this honorable court for that purpose, that in default the said Alabama and Georgia Manufacturing Company and any and all persons claiming under it be absolutely debarred and forever foreclosed of and from all equity or redemption in and to said mortgaged premises and every part thereof, and that it shall deliver up to orator all papers, deeds and other writings in its power, custody or control relating to or covering said premises.

And that in default of payment of said sums by a day to be appointed, that your orator as trustee or such other person as may be named by the court in its decree and acting under and in pursuance thereof shall sell the property embraced in said deed of trust upon such notice and terms as the court may direct, and that the proceeds of such sale be under such decree paid to the persons entitled thereto.

4 3rd. That a receiver be appointed to take possession of and hold said property, preserve and protect the same until the final decree is had in this cause.

4th. That said defendants and each of them, their agents and servants be enjoined from in any manner interfering with said property until the further order of the court.

5th. That your orator may have such other and further relief as to the court may seem meet and proper under the facts of the cause.

6th. That the writ of subpœna issued and be served on each of said defendants commanding them and each of them at a certain

day and under a certain penalty therein to be inserted personally to be and appear before this court, and then and there to stand to, abide and perform such order, direction and decree as may be made therein. And your orator will ever pray etc.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Complainant's Solicitors.

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

Personally comes J. J. Robinson, who on oath says that the statements made in the foregoing bill are true of his own knowledge except where made upon information and belief and as to such he believes them to be true.

J. J. ROBINSON.

Sworn to and subscribed before me this 20 day of January, 1891.

[SEAL.] O. C. FULLER,
U. S. Circuit Court Commissioner, N. D. of Ga.

EXHIBIT "A."

STATE OF GEORGIA, }
Troup County. }

At a meeting of the board of directors of the Alabama and Georgia Manufacturing Company held at the office of said company in the city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present the following resolutions was adopted:

Whereas, the creditors of the company, namely: George Huguley, W. T. Walker, W. H. Huguley, W. H. Huguley & Co., and others have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company that the officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st) 7th day of January, 1884, and to run twenty years from date with the option of the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest at the rate of eight per cent. per annum, with interest coupons attached payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the com-

pany be and they are hereby authorized and empowered to execute a *first mortgage* on all of the real property of the company, including mill, machinery, fixtures and all appurtenances thereto attached, either to the holders of said bonds, or to trustee for their benefit as may — agreed upon. Said bonds and mortgage to be signed by the president under the seal of the company, and countersigned by the secretary and treasurer. Said bonds to be issued in such denomination as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company to wit: W. H. Huguley first president, and W. H. Huguley & Co., its treasurers, and W. T. Huguley, its secretary, in conformity with said resolutions have issued the bonds of said company to the amount of sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars due and payable on the (1st) 7th day of January, 1904, with interest coupons attached payable semi-annually on the 7th day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

6 In which said bonds the said company reserve the right and the privilege to pay off and call in all of or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds are numbered from one to one hundred and thirty inclusive.

Now this instrument made and entered into on this the first day of January, 1883, between the Alabama and Georgia Mfg. Co. of the first part, and J. J. Robinson, W. C. Yancey and W. T. Huguley as the trustees of the holders of said bonds, of the second part, witnesseth, that the Alabama and Georgia Manufacturing Company, the said party of the first part, for and in consideration of the premises and for the purpose of securing the payment of principal and interest of said bonds, and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees aforesaid, their survivors and successors, the following real estate to wit: All of a large island in the Chattahoochee river designated as Island No. Six (6) containing one hundred and forty-three (143) acres more or less; also Island No. Nine (9) containing seven acres more or less, also a small island between Islands Numbers Nine and Six upon which the east end of the factory building rests, containing four acres more or less. All of the three above described islands being in the twentieth (20) district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands bounded on the east by said river beginning at a point on the west bank of said river nearly opposite the center of the seven-acre island at a

black gum, at or near a place known as Sulb's corner—thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell joined, known then as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the begin-
7 ning corner—containing sixty-five 23-105 acre- more or less, lying and being in Chambers county, State of Alabama, and being a part of section- twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right-of-way from the factory building to the public road leading from West Point, Georgia to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements including the cotton mill and all the machinery therein or thereto belonging and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguly, their survivors and successors in trust, that is to say upon trust for securing and providing for the full and complete payment of the aforesaid sum of sixty-five thousand dollars ($65,000) with the interest due and owing by the said Alabama and Georgia Manufacturing Company to the holder or holders of the said bonds or the coupons thereto attached herein before referred to and described, and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguly, or a majority of them, or their survivors or successors are hereby authorized and empowered, should default be made in the payment of said bonds when they fall due, or in the payment of the interest on said bonds as it shall approve, then immediately on such default being made known by the holder or holders of said bonds or holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment if the said interest or principal as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama and Georgia Manufacturing Company upon giving sixty days' notice of the time and place of sale together with a description of the property in a newspaper published in Atlanta, Lagrange and West Point, Georgia, *to proceed to sell at public*
8 *auction at the* office of said company in the city of West Point, Georgia, *for cash*, the property herein conveyed, or a sufficient amount of the same to pay the amount due and apply the proceeds of sale, first, to the expense of sale, second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus if any, to be paid over to the proper officer of said company,

and to execute titles to the purchaser thereof, and in the event the amount realized from the sale of said property shall be sufficient to liquidate the whole of said debt, then the same shall be prorated amongst the holders of said bonds and coupons. And for the further security of the holders of said bonds and coupons, the said Alabama and Georgia Manufacturing Company hereby stipulate and agrees that it will keep this factory building and machinery insured against loss by fire in good and responsible insurance companies to the extent of *sixty thousand dollars*, and on their failure to do so the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment — said bonds and coupons and the said Alabama and Georgia Manufacturing Company hereby reserve to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same and dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed until after default as herein provided. Now, if the said Alabama and Georgia Manufacturing Company shall pay off and discharge all said bonds and coupons, then, and in that event, this conveyance to be null and void.

In witness whereof, W. H. Huguly, the president of said company, and W. T. Huguly, the secretary, and W. H. Huguly & Co., the treasurers of said company have hereunto set their hands and affixed the seal of said company at its office in the city of West Point, on the 2d day of January, 1884.

W. T. HUGULY, *President.* [L. S.]
W. H. HUGULY & CO., [L. S.]
Vice President and Secretary.
W. H. HUGULY, *Treasurers.* [L. S.]

9 Signed, sealed and delivered in the presence of
W. E. OSLIN.
L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust imposed by the same.

J. J. ROBINSON. [L. S.]
WM. C. YANCEY. [L. S.]
W. T. HUGULY. [L. S.]

Signed, sealed and delivered in presence of
W. E. OSLIN.
L. M. HARRIS, *J. P.*

Filed in office for record January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate.

Filed in clerk's office 21st day of January, 1891.
O. C. FULLER, *Clerk.*

Order to Show Cause.

Read and considered.

It is ordered that defendants show cause before me at the United States court room at 10 o'clock a. m. on Saturday the 31 of January, 1891, why an injunction should not issue and a receiver be appointed as prayed for in the bill.

Let this bill be filed and service be perfected as is usual in equity.

In open court this January 21, 1891.

WILLIAM T. NEWMAN,
United States Judge.

Agreement of Counsel.

The plaintiff in the foregoing bill hereby agrees that he will not for the present press the application for injunction and receiver without giving at least thirty days' notice to N. J. & T. A. Hammond solicitors for defendants. And the defendants reserve the right to call up the said application for receiver, etc., on giving like notice to Dorsey, Brewster & Howell or Abbott & Smith, solicitors for the plaintiff.

This 31 day of January, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Solicitors for Plaintiff.
N. J. & T. A. HAMMOND,
Solicitors for Defendants.

Amendment to Bill.

The plaintiff now comes and by leave of the court first had and obtained amends his bill so as — strike from Exhibit A to bill the figure 7 wherever it is used to show the date of January, 1884, and insert in lieu thereof the figure 1 so that the same shall read 1 of January instead of 7 of January, 1884, where it occurs.

In open court February 26, 1892.

WILLIAM T. NEWMAN,
United States Judge.

I acknowledge due and legal service of the within bill waiving copy, process and copy process.

This 29th January, 1891.

W. T. HUGULEY.
ALABAMA & GEORGIA MANUFACTURING CO.,
Per N. J. & T. A. HAMMOND, *Its Solicitors.*
HUGULEY MANUFACTURING CO.,
Per N. J. & T. A. HAMMONDS, *Its Solicitors.*

Filing.—Filed in the clerk's office 4th day of February, 1891.
O. C. FULLER, *Clerk.*

Appearance.

ATLANTA, GA., 10 *February*, 1892.

To the clerk of the circuit court:

You will enter our appearance as solicitors for defendants, The Huguley Manufacturing Co., and The Ala. & Ga. Mfg. Co., in the bill of J. J. Robinson, trustee against them and W. T. Huguley.

N. J. & T. A. HAMMOND,
Attorneys at Law.

11 Filed in clerk's office, 13 day of February, 1891.
O. C. FULLER, *Clerk.*

Demurrer, Bill for Foreclosure, etc.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

The defendant, The Alabama and Georgia Manufacturing Company by its solicitors N. J. & T. A. Hammond and The Huguley Manufacturing Company, by its solicitors, N. J. & T. A. Hammond and John C. Orrick, come and by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in manner and form as therein set forth and alleged do demur and say that said bill is insufficient in law.

And for causes of demurrer they specially set down the following:

1. The alleged trust mortgage which is the basis of said complainants' claim of right, gives him no authority to sue alone to enforce the same. He has no title in himself alone, but is only one of the joint trust mortgagees.

2. If in any event complainant could so sue alone, his bill does not sufficiently allege any facts which authorize him to sue without joining W. T. Huguley, his co-trustee, as complainant.

3. The surviving joint trustees, W. T. Huguley and J. J. Robinson, for all that appears in said bill, must necessarily join to assert the trust in said mortgage set forth, and because said W. T. Huguley is a citizen of and a resident of said district in which the defendants against whom this bill is filed are citizens and residents, thus said court has no jurisdiction to foreclose said mortgage as by said bill prayed for.

4. Said complainant, if allowed to sue without joining his said co-trustee, for the purposes of his said bill must necessarily join the bondholders (or at least so many of them as have made the
12 election that the bonds shall be due and the request that the proceed) as parties complainants in said bill, and make the other parties to his bill, or give a reason why he can not.

5. Said complainant does not aver when default in the payment of interest on said bonds or on any of them was made known to the trustees or either of them, nor that any notice thereof has been served on the president of said Alabama and Georgia Manufacturing Company, both which are conditions precedent to the exercise of authority and *and* duty by said mortgage conferred on said trustees or a majority of them.

Wherefore these defendants respectfully demand the judgment of this honorable court whether it or either of them shall be compelled to make any further or other answer to said bill or any of the matters or things therein contained and pray to be hence dismissed with its reasonable costs in this behalf sustained.

THE HUGULEY MANUFACTURING CO. AND
THE ALABAMA AND GEORGIA MANUFACTURING CO.,
By JOHN C. ORRICK AND
N. J. & T. A. HAMMOND, *Counsel as Above Stated.*

Mr. John C. Orrick and N. J. & T. A. Hammond, solicitors for and counsel of said defendants as above stated, do certify that in our opinions the foregoing demurrer is well founded in point of law.

JOHN C. ORRICK,
N. J. & T. A. HAMMOND,
Of Counsel for said Defendants.

UNITED STATES OF AMERICA, }
Division Eastern, Eastern District of Missouri of C. Ct. }

Personally appeared before me, T. L. Crawford, commissioner United States circuit court, eastern division, eastern judicial district of Mo. Demetrius Jannopoulo, president of the Huguley Manufacturing Company, who being duly sworn deposeth and says that the foregoing demurrer is not interposed for delay.

DEMETRIUS JANNOPOULO.

13 Sworn to and subscribed before me this 7 day of February, 1891.

[SEAL.]

T. L. CRAWFORD,
Commissioner United States Circuit Court, Eastern Division, Eastern Judicial District of Mo.

GEORGIA,
Troup County.

Personally appears before me a — in and for said county in the northern district of Georgia, W. H. Huguley, who being sworn deposeth and says that the foregoing demurrer by him for the Alabama and Georgia Manufacturing Company is not interposed for delay.

Sworn to and subscribed before me this — of February, 1891.
Filed in clerk's office 10 day of February, 1891.

O. C. FULLER, *Clerk.*

We waive having this demurrer sworn not to be for delay by the Ala. & Ga. Manufacturing Company on account of the sickness of its president. This 9th February, 1891.

ABBOTT & SMITH,
Of Plaintiff's Counsel.

Acknowledgement of Service.

Service of the foregoing demurrer acknowledged. Copy waived. February 13, 1891.

ABBOTT & SMITH,
Solicitors for Plaintiff.

Filed in clerk's office 13 day of February, 1891.

O. C. FULLER, *Clerk.*

Order Overruling Demurrer.

STATE OF GEORGIA:

In Circuit Court of the Northern District of Georgia.

Demurrer, etc.

J. J. ROBINSON, Trustee, etc.,
versus
A. & G. MFG. CO. ET AL.

In the above stated case there came on to be heard a demurrer filed by defendants to the bill on certain grounds in said de-
14 murrer set out after argument heard. It is ordered by the court that said demurrer be not sustained but the same is hereby overruled on all the grounds therein taken.

L. Q. C. LAMAR,
Circuit Justice.
WM. T. NEWMAN,
District Judge.

May 30th, 1891.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Attorneys for Complainants.

Filed in clerk's office May 30, 1891.

O. C. FULLER, *Clerk.*

Opinion of Court on Demurrer.

In the United States Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
THE ALABAMA & GEORGIA MANUFACTURING COMPANY.

Before Lamar, justice, and Newman, J.

By the COURT: There are five grounds of demurrer and for convenience we consider them in inverse order. The first ground thus considered, is that "said complainant does not aver when default in the payment of interest on said bonds, or any of them, was made known to the trustees, or either of them, nor that any notice thereof has been served on the president of the said Alabama and Georgia Manufacturing Company, both of which are conditions precedent to the exercise of authority and duty, by said mortgage conferred, on said trustees or a majority of them.

The language of the trust deed so far as applicable to this ground of demurrer, is as follows: "In order, and in the fullest manner to provide for the payment of bonds, aforesaid, and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. G. Robinson, W. C. Yancey & W. T. Huguley, or a majority of their survivors or successors, are hereby authorized and empowered, should default be made in the payment of the said bonds when they fall due, or in the payment of the interest on said bonds as it shall accrue, they immediately on such default being made known by the holder or holders of said bonds, and the holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company, the same shall remain unpaid for six months after such default shall have been made in the payment of said interest or principal, as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama and Georgia Manufacturing Company upon giving sixty days' notice of the time and place of the sale together with a description of the property in a newspaper published in Atlanta Lagrange & West Point, Georgia, to proceed to sell at public auction, etc.;" then providing for the manner of sale and *and* the applications of the proceeds. After alleging default in the payment of the coupons due July, 1890, and January, 1891, and that more than six months had elapsed since the July coupons fell due, and that they still remain unpaid and that no money was deposited at the place of payment at the time the said July coupons

fell due, and none deposited within six months thereafter, and that all or nearly — of said July coupons remained unpaid, as orator is informed by the holders thereof, the bill proceeds, "Orator has been notified since the expiration of the six months after the said July coupons fell due, by a majority of said bondholders in amount of their election to treat the whole of said principal sum named in the bonds as due under the provisions of said bonds; the orator has been requested to begin proceedings to secure the property pledged for the payment of said indebtedness and he deems it to the best interest of the holders of said bonds that he should do so."

It will be seen that even if this provision applies in a case where foreclosure proceedings in the court are instituted, as well as of the trustees' proceedings to advertise and sell as authorized by the trust deed, the allegation lacking is that notice was served upon the president of the company. If the trustee was proceeding to sell
16 the property himself under the authority of the trust deed, a strict compliance with this provision might be demanded, but, in as much as he is proceeding in the court, asking for a decree of foreclosure, we are of the opinion that the allegation of notice to the president is unnecessary. It is alleged that the Alabama and Georgia Manufacturing Company has ceased to do business and keep an office in West Point, Georgia, or elsewhere, for the transaction of business, and that the property covered by the trustees has been sold under the decree of the State court and bought by parties who, having organized the Huguley Manufacturing Company, are now in possession of the same. It might be argued, if it were necessary so to do, that this condition of affairs would dispense with the allegation of notice to the president, even if it were otherwise necessary, but in view of the opinion expressed above further discussion of it is unnecessary.

The other grounds of demurrer may, we think, be considered together, and they are, substantially, that J. J. Robinson, who alone brings this bill, is unauthorized to sue alone. The allegation of the bill is that Yancey, one of the trustees, is dead, and this, it is conceded, disposes of the matter so far as he is concerned. The further allegation is that said W. T. Huguley, defendant herein, and named as one of the trustees for said bondholders, claimed at the time of said sale to be interested in the purchase of said property, and now claims also to be interested in the property and assets of "said Huguley Manufacturing Company. He is interested adversely to your orator as trustee of said bondholders." The sale referred to is the sale under the decree of the State court before mentioned. While it appears, it is true, from the bill, that the property was sold under the decree of the State court subject to this trust deed, it nevertheless, we think, appears from the foregoing allegations that Huguley's interest is adverse to that of the bondholders, and consequently, to show his incapacity as a party complainant. It might certainly have been alleged with more definiteness, but conceding the statements to be true, as the demurrer does,

we think his adverse interest sufficiently appears. It may be mentioned that the trust deed is signed by W. T. Huguley as vice
17 president and secretary of the Alabama and Georgia Manufacturing Company, so that it would seem that his interest has been adverse to that of the trust created by the deed from the beginning.

Filed in clerk's office, 6th day of July, 1891.

O. C. FULLER, *Clerk.*

Bill to Foreclose Mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

Answer of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

These defendants now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, these defendants answering say:

1. The citizenship and residences of all the parties named in said bill are admitted as alleged.

2. These defendants are informed and believe that said Alabama and Georgia Manufacturing Company (hereinafter called, for brevity, the old company), did make some sort of mortgage to said J. J. Robinson, W. T. Huguley and W. C. Yancey, but defendants believe that it is not the same as stated in Exhibit A, to said bill, and insist on proof of said mortgage.

3. These defendants admit that said old company did issue bonds. Of the exact form or contents of each of the defendants are ignorant. Who holds the same these defendants do not know, except that they have been informed of the following holders of said bonds as follows:

18	P. Romare, for Atlanta national bank	4 bonds
	M. & L. Lanier	84 "
	N. D. Denson, as representative of M. T. Walker, deceased.	20 "
	A. T. Dallas	4 "
	Judge B. F. Ferrill	"
	Mrs. Yancey	"
	Susie Huguley, Mrs. Lanier and Mrs. Yancey, represented by L. Lanier	"
	W. H. Huguley	"
	J. H. Nolan	"
	Mrs. Sallie Huguley	"

All of which bondholders reside in Georgia in said district, except said Denson.

4. Whether said old company is insolvent these defendants do now know. That it has ceased to do business as a manufacturing company these defendants admit. From 1882 to July, 1888, W. H. Huguley & Co., of West Point, Georgia, was the treasure- of said old company. Said treasure- firm was composed of W. H. Huguley, W. T. Huguley and J. H. Nolan, all of said West Point, Georgia. The firm carried on there a mercantile business and part of the time a banking business, also; said banking business began in —— 188–. During all the said six years either said W. H. Huguley or said W. T. Huguley was president of said old company; when one was president the other was vice president. In July, 1888, said W. H. Huguley, W. T. Huguley, J. H. Nolan, J. J. Robinson, A. T. Dallas, L. Lanier, W. S. Jackson, L. D. Hutchinson and J. M. Harrington were made directors and said W. H. Huguley was elected its president. Its business office continued at the said place of business of said W. H. Huguley & Co. in West Point, Ga., where said firm there and ever since up to this moment has continued to do business.

In that state of facts a bill was filed in the superior court of Troup county, Georgia, against said W. H. Huguley & Co., by said A. T. Dallas and certain other stockholders of said old company, praying for an accounting between said firm and said old company and for a receiver. H. O. Fisher was appointed receiver and took
19 charge of the mortgaged property aforesaid. Said firm answered, setting up by cross bill its claim against said old company; and other creditors became parties and set up their claim against said old company. The whole matter was referred to a special master; he reported, and there was on the 15th day of November, 1889, a decree thereon, the per-inent parties of which were as follows:

That said W. H. Huguley & Co. should recover of said old company $21,095.00 principal. Interest to Nov. 4, 1889, $2095.55, and future interest at 8 per cent. per annum until paid, all secured by a mortgage dated August 2, 1888, on said property in the mortgage described in the exhibit to said bill, to be levied by mortgage *fi. fa.* on mortgaged property, and said firm recovered of said old company other principal debt of $2455.95, due Nov. 4, 1889, including $324.76, as their attorneys' fees, plus further interest on said last principal until paid, and — costs, and it was decided that a common law *fi. fa.* issue for both, to-wit, $23,500.00 principal, $2095.55 interest, until Nov. 4th, 1889, and costs.

By said decree the Atlanta national bank recovered of said old company $30,000.00 principal plus protest fees $6.00, plus fees of their attorney N. J. Hammond $546.44, and also as interest to that date $2371.93 all secured by said mortgage of 2 August,-1888, with a foreclosure therefor of said mortgage on said property and that both a mortgage *fi. fa.* and a common law *fi. fa.* issue therefor, upon application.

It was further therein decreed that S. M. Inman & Co., recover of said old company $10,000.00 principal $2012.50 interest to date and — costs, and that the Lowell Card Company recover of said old company $617.50 principal.

It was therein further decreed that certain other costs and expenses to be paid to officers of court, stenographer, master, counsel for complainants, and receiver Fisher and a temporary receiver W. W. Harrington, all amounting to $—, or some such large sum all which sums in this paragraph mentioned were mentioned in the 8th subdivision of said decree.

Further in said subdivision it was decreed to be paid as follows:

"F. Whatever part of the interest on the coupons of the first mortgage bonds of the Alabama and Georgia Manufacturing Company paid or to be paid by said Fisher under the order of this court of the disposing of the assets in his hands as shall appear by the orders of the chancellor in this regard.

G. These last mentioned items to be taxed by the clerk upon such orders of the chancellor and the clerk shall also tax all other costs not hereinbefore specially provided for."

Said decree further provides as follows:

"10. The dignity of the respective liens herein set forth *are* as follows:

First. Said remainder of over due interest on the first mortgage bonds of said The Alabama and Georgia Manufacturing Company if any shall be reported by the chancellor.

Second. The other items of costs and expenses mentioned in item eight (8) of this decree.

Third. The mortgage debts due to said W. H. Huguley & Company and said Atlanta national bank, these two being of equal dignity.

And fourth. The unsecured debts of W. H. Huguley & Co., S. M. Inman & Co., the Lovell Card Company."

And it is further provided

"13. It is further ordered and decreed that all the property of the Alabama and Georgia Manufacturing Company, herein described be sold as an entirety by said receiver Fisher, after advertisement as sheriff's sales are advertised and said sale to be conducted within the legal hours of sheriff's sales of the first Tuesday in January (1890) next to the highest bidder for cash except that any judgment against said Alabama and Georgia Manufacturing Company specified herein may be rated as cash according to its said dignity except sufficient to pay plaintiff's attorney's fees thereon and said receiver may and shall distribute the proceeds of such sale after said attorney's fees are paid according to the said dignity of said claims as between the respective owners thereof. No claim shall be treated as cash until those of higher dignity are paid. Said receiver shall and will report his action in the premises to the undersigned chancellor. Said sale shall be made in Harris

county, Georgia, where said property in Georgia is situated, this November 15, 1889.

S. W. HARRIS,
J. S. C. C. C."

21 This was the decree under which said mortgaged property was sold, not by the sheriff, but by said receiver, Fisher, and was purchased as alleged by certain persons who afterwards did convey title thereto to said Huguley Manufacturing Company, which, for brevity, will hereinafter be called the new company. The bidders at said sale bid for said property the sum of $69,000.00. The next highest bid to their own was $68,500.00, which was by persons in no way connected with those who did purchase, and who had none of the claims which were to be treated as cash at said sale. That shows the value of said property at that time. *All said bidding was for the property, subject to said first mortgage.*

Neither at the time of said sale nor since did said W. T. Huguley have any interest in said property so bought, except as a member of said firm of W. H. Huguley & Co.

This defendant does not know or have any information of any other claim of interest by said W. T. Huguley in said property.

This defendant says that it has no information about insurance on said property according to and under said first mortgage except as follows: Insurance was kept thereon before said litigation above $65,000.00, but so far as this defendant is advised, never before said sale was there any insurance in the name of or on its face for the benefit of the said trustees. If the insurance ever fell below the sum above named they are advised it was only during the said litigation, when, because the mills were empty and idle, some insurance companies would not insure as before. Since said sale said property has been insured by said purchasers and the Huguley Manufacturing Company for the benefit of said trustees, and is now so insured as follows:

London Fire Ins. Co., England.	Expiring	February	5, '91..	$10,000	renewed
Macon Fire Ins. Co., Ga.	"	"	5, '91..	2,500	"
Liverpool, London & Globe, England	"	"	17, '91..	25,000	"
Scottish Union & National,	"	"	17, '91..	5,000	"
" " " "	"	"	March	19, '91..	5,000	"
Commonwealth Union	"	"	"	27, '91..	12,500	"
London Assurance Corp.	"	"	June	25, '91..	5,000	"
					$65,000	

All of the above in favor of trustees for 1st mortgage bondholders.

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Hartford Ins. Co., Conn.	July	7.....	$10,000
Royal Ins. Co., England	"	8.....	10,000
Phœnix Assurance, England	"	22.....	10,000
			$30,000

Loss, if any, payable to Huguley Mfg. Co.

Commercial Union, England	July	8	$25,000
Orient	"	8	15,000
Rome	"	8	7,500
St. Paul Fire and Marine, St. Paul, Minn.	"	10	2,500
			$50,000

Loss, if any, payable to St. Louis Trust Co.

London & Lanc-shire, England	July	12	$15,000
American Fire Ins. Co. New York	"	12	15,000
Sun Fire office	"	12	10,000
New York Fire Ins. Co.	"	12	2,500
Guardian	"	12	2,500
Union Assurance, England	Aug.	23	5,000
Commonwealth, N. Y.	"	23	5,000
			$55,000

Loss, if any, payable to Huguley Mfg. Co.

This was intended to be and these defendants claim was a compliance with the obligation with said old company in that regard in said first mortgage. At any rate, it was known and approved by W. T. Huguley, one of the said trustees, residing in Georgia. Said Robinson, trustee, residing in Alabama, and so far as these defendants knew, in no way concerned himself about the same. Certainly there was no complaint by him to these defendants until the vague one in the bill set forth.

These defendants state that the facts about payments and non-payments of the interest on said bonds are as follows: The same was promptly paid at maturity by said old company at the said store of W. H. Huguley & Co., until the mortgaged property was put in the hands of a receiver as aforesaid.

While said property was held by said Fisher, receiver, he had for his banker, the Atlanta national bank, at Atlanta, Georgia, and paid the interest at said bank, or it had it done by its correspondents M. & L. Lanier, of West Point, Ga. All the coupons presented at one or the other of said banks were so paid.

L. Lanier was not a party on the record in said litigation with the old company, but was a witness for complainants
23 therein and a most active worker for them. Before said decree was taken complainants' counsel had to and did consult said L. Lanier to see if he would consent thereto and he did so consent. The sale occurred after that, and after the sale said M. & L. Lanier for said Atlanta national bank and said Atlanta national bank paid off the coupons due in July, 1891, plus the interest due thereon for the time it had been in default. So the coupons due in January, 1890, were paid off with interest thereon in July, 1890. It was paid under notice like the one below mentioned *mutatis mutandis*.

Intending in good faith so to pay the coupons due in 1890 and interest thereon, promptly, to each and every holder thereof on the 29th of December, 1890, D. Jannopoulo, the president of the Huguley

Manufacturing Company, wrote to the Constitution Publishing Company at Atlanta, Georgia, to publish the following notice:

"Notice.—All coupons due July 1, 1890, to the first mortgage bonds of the Alabama and Georgia Manufacturing Company, will be paid on presentation at the Atlanta national bank, Atlanta, Georgia, by said bank.

HUGULEY MANUFACTURING COMPANY.
D. JANNOPOULO, *President.*"

The letter of said D. Jannopoulo, president, sending said notice requested that it be inserted in the daily of 31st of December, January 1 and 2. It was so published except that the first insertion was on January 2, 1891.

On the said 29th day of December, 1890, said Jannopoulo, president, also wrote said Atlanta national bank to pay said July coupons, and enclosed in the letter the money, $2678, to be used by said Atlanta national bank in payment of said coupons due July 1, 1890, and interest thereon. The regular time for the transmission of letters from St. Louis, Missouri, the home of said Jannopoulo, where said letters were written and mailed, was such that they should have reached Atlanta by 6.40 o'clock p. m., December 30, 1890. In Atlanta at that time there were three deliveries per day, to-wit: *at* the Atlanta national bank perhaps sent for its mail. The banking hours of said Atlanta national bank were from 9 a. m. to 2 p. m. daily except Sundays.

24 On the 2d of January, 1891, at the instance of said trustee, W. T. Huguley, N. J. Hammond, during the morning banking hours, went to T. Romare, vice president of said Atlanta national bank, and told him that said W. T. Huguley wished to know whether Mr. Jannopoulo had provided for paying said July interest coupons and interest thereon. Said Romare said that he had not. In answer to a question whether he would pay same on a telegraphic request of said Jannopoulo, said Romare answered he would. When this was reported to said Huguley by said Hammond, said W. T. Huguley telegraphed said Jannopoulo, and in the afternoon answer came to care of said Hammond, who read same. It told of said provision published in the said *Constitution* for said payments. Said Hammond went at once to said Atlanta national bank, after banking hours, and failing to find the said Romare, told Mr. Currier, the cashier of said Atlanta national bank, of said dispatch, who said he had instructions to pay and would do so as advertised, and upon said Hammond's suggestion, promised to telegraph to said M. & L. Lanier to pay said July, 1890, coupons and interest thereon. And said Currier promised to telegraph and defendants believe he then did so telegraph. Said M. & L. Lanier were the regular correspondents of said Atlanta national bank and made no objections to such sub-agency but accepted the same. Up to the receipt of that dispatch of said M. & L. Lanier none of the July, 1890, coupons had been presented either in December, 1890, or in January, 1891, nor

had any demand of payment on them then — made any where during those months of December nor January after said dispatch was sent to them.

One of the said M. & L. Lanier pretended to bondholders that his house had a dispatch from the Atlanta national bank to pay the coupons due 1st of January, 1891, but no authority or means to pay those due July 1, 1890.

Several times said Hammond was in the Atlanta national bank and talked with said Romare, who told him that said Laniers had paid some coupons due January 1, 1891, but that none due July 1, 1890, had been presented to them for payment. If they
25 had paid any due January 1, 1891, it was without such instructions from the Huguley Manufacturing Company or of any one else so far as these defendants are aware.

The Atlanta national bank paid on coupons due January 1, 1890, and interest on same as follows: July 8, 1890, $300.00—July 11—$1414.40, and $756.00 July 23, $700.00 September 22, $315.60 and September 26—120.00. It paid on coupons due July 1, 1890, and interest due thereon as follows: Jan. 5, 1891, $4.20; Jan. 8, 1891, $289.80; Jan. 14, 1891, $164.00, and Jan. 23, 1891, $160.00.

These defendants have no later report.

The Atlanta national bank has never notified either of these defendants of its unwillingness to act as agent to pay off said interest nor of any unwillingness to accept same on the bonds held by it nor given any notice to either of them of any such unwillingness by said Laniers to act as their sub-agents in this matter, nor did Laniers give such notice.

After this bill was filed, said Jannopoulo, president, came to Georgia he found that the bill was filed by Abbott & Smith, the regular attorneys of the Atlanta national bank, joined by other counsel and that said Abbott had declined to state what bondholders desired the suit begun. Said Jannopoulo then went to West Point, Ga., and found that by showing the telegram purporting to authorize him to pay the January, 1891, interest, but not that of July, 1890, and by representing that the property was not insured as required *as* by said first mortgage, L. Lanier deceived some and they joined with others, asked said Robinson to file this bill.

Among those who made the request was the Atlanta national bank and on the faith of that request they were joined by said Denson representing W. T. Walker's estate holding 20 bonds. This was learned from Robinson and said Denson. After said Jannopoulo learned that, he came to Atlanta and without disp-osing what had been learned at Lafayette, Alabama (though others may have disclosed same) called on the said Atlanta national bank for a statement of what it had paid and obtained the one copied above. That was on the 29th of January, 1891,—since then Mr. Elliott has received the July 1, 1890, interest on his 11 bonds, $226.60.

26 These defendants say that the officers of said old company remain as hereinbefore stated and that many of said bonds

are owned or held by one or more of them, that the law of the old company's charter, allowed it to change its place of business to either Lagrange, Columbus or West Point, Ga. West Point, Ga. was its place of business when the bonds were issued and they and the interest on them were made payable at the old company's office. No action of the old company has changed its office from said W. H. Huguley & Co.'s said place of business. If in law that be held to be its place of business, these defendants say that though no money was there deposited to pay the same, the other trustee's place of business was there, and had a demand been made there the person making the same would have been told where to get his money, or been paid there. No demand was made there. But these defendants aver that after the old company ceased manufacturing by reason of all the facts aforesaid, there was an offer to change the place of paying the coupons to the Atlanta national bank, and that offer was accepted by the bondholders, who took the money from that bank, or M. & L. Lanier as its sub-agent when the January, 1890, coupons were paid. Defendants claim that that made Atlanta, Ga., that place of future payments, at least until notice to the company was given by some holder. No such notice was given.

These defendants aver that there was a *bona fide* intention that there should be no default as to said coupons so as to make said bonds due, and that said Jannopoulo sent the money to the Atlanta national bank on 29th December, 1890, after taking the advice of his attorney, Mr. Orrick, that that was right. It was sent in time and was received in time at said bank, it is claimed by said Atlanta national bank, that it was not opened and put on its books until the 2d of January, 1891, because the 1st of January, 1891, was a legal holiday in Georgia. If a holiday as claimed would excuse said bank from receiving said money and entering its trust as claimed, it would also excuse payment on that day. These defendants do not concede that the said Atlanta national bank is so excused.

27 These defendants insist that so far as the forfeiture is concerned no wrong was done said bondholders in taking time after the maturity of a coupon for paying same. Said Jannopoulo had advanced large sums of money in and about the purchase of said property, aggregating say $55,000.00 and had spent say $5,000 in putting up new houses and other improvements in same, and has contracted and is now spending an additional $5,000.00 in machinery and betterments; said W. H. Huguley & Co., had put therein certain finding, etc., worth $1,500.00 and the whole property had been greatly improved and was in full operation when said bill was filed, and is now in full operation. Said Laniers are interested in a rival cotton mill on the same river about 2½ miles above this mill and these defendants think said Laniers are much more interested in crippling the Huguley Manufacturing Company than in collecting said coupons or bonds. These defendants say that they are continually ready and offered and do still

offer to pay them at said Atlanta national bank and if any bondholder objects to the place will pay him elsewhere at his option.

They insist that to hold said debts wholly due under the foregoing circumstances *and* would be contrary to said contract, and would be a fraud upon the right of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Co. These defendants accept the waiver made by complainant as to verifying this answer, and therefore do not swear to the same, but will prove it all to be true.

They pray to be discharged hence with their reasonable costs most unjustly incurred by bringing this bill under the facts aforesaid.

N. J. & T. A. HAMMOND,
Solicitors for the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.
JOHN C. ORRICK,
Solicitor for Huguley Manufacturing Company.

Filed in clerk's office 9 day of June, 1891.

O. C. FULLER, *Clerk.*

Amending its answer the Huguley Manufacturing Company says that it is the owner of all the said mortgaged property subject to said mortgage of $65,000.00 and interest having bought the
28 same from the purchasers at said receiver's sale. They pray if said $65,000.00 mortgage be by decree foreclosed in this case that the decree shall protect the Huguley Manufacturing Company [by decreeing that any surplus after paying the mortgage for $65,000.00 and interest and costs shall belong to the Huguley Manufacturing Company and for such other relief as may be equitable.

This 13 Nov. 1891.

N. J. & T. A. HAMMOND,
Att'ys for the Huguley Mfg. Co.

Let the above amendment be considered as of file on this 13th Nov. 1891, as part of said answer.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON, *Sols. for Plff.*

Filed in clerk's office 13 day of November, 1891.

O. C. FULLER, *Clerk.*

Replication.

Bill for foreclosure, etc.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee, etc.,
vs.
ALABAMA & GEORGIA MFG. CO. ET AL.

The replication of J. J. Robinson, trustee, etc., the plaintiff in the above stated cause, to the answer of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law, to be replied
29 unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall decide; and hereby prays as in and by his said bill he hath already prayed.

J. J. ROBINSON, *Trustee.*

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Solicitors for Plaintiff.

Filing.—Filed in clerk's office, 24 day of June, 1891.

O. C. FULLER, *Clerk.*

Decree pro Confesso as to W. T. Huguley.

J. J. ROBINSON, Trustee,
vs.
W. T. HUGULEY ET -L.

The defendant in the above stated case having failed to file his demurrer, plea or answer in the clerk's office at Octoberrules as under the order granted by the court.

It is therefore ordered that the bill be taken *pro confesso* and that the case be proceeded in *ex parte* and the matter of the bill may be decreed by the court at any time thirty days after the entry of this order if it should appear that the same may be proper to be decreed, as to said W. T. Huguley:

This Oct. 5, 1891.

O. C. FULLER, *Clerk.*
ABBOTT & SMITH,
Solicitors Complainant.
DORSEY, BREWSTER & HOWELL,
Solicitors Complainant.

Petition to Make St. Louis Trust Company a Party.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, Complainant,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, THE Huguley Manufacturing Company, W. T. Huguley, Defendants.

Now at this day comes the St. Louis Trust Company, a corporation duly organized under the laws of the State of Missouri and authorized to act as trustee as hereinafter mentioned and prays that it be made a party defendant herein and states that on the 1st day of July, A. D. 1890, the defendant The Huguley Manufacturing Company by mesne conveyances from H. C. Fisher, receiver of the said Alabama and Georgia Manufacturing Company, defendant, became the owner of all the property covered by the said mortgage executed by the said Alabama and Georgia Manufacturing Company to complainant and fully described in his said bill; that on the 17th day of July, A. D. 1890, the said Huguley Manufacturing Company, defendant, did by its mortgage of said date hereto the court shown convey to and duly mortgage to your petitioner, The St. Louis Trust Company, said property to secure to it the payment of certain one hundred bonds each of the par value of $500, dated the 1st day of July, A. D. 1890, and running until the 1st day of January, A. D. 1904 and containing similar terms and provisions as to payment as provided in said bonds of said Alabama and Georgia Manufacturing Company, exhibited in said bill that said mortgage to said petitioner of said Huguley Manufacturing Company provides that said mortgage is subject to said mortgage of said Alabama and Georgia Manufacturing Company; that said one hundred bonds were duly issued prior to the filing of the bill herein and are now outstanding and unpaid; that this petitioner as trustee in said mortgage of said Huguley Manufacturing Company is interested in protecting the said property for the holders of the said bonds issued by

the said Huguley Manufacturing Company; that it does not desire a foreclosure of either of said mortgages and so far as advised maintains that no good and sufficient cause for the foreclosure sought by said bill of complaint exists but your petitioner prays that in the event this court should order such foreclosure that in the decree thereof it should be provided that at any sale of the said property thereunder, the said bonds of the said Huguley Manufacturing Company or any part thereof issued under the said mortgage to this petitioner as trustee shall be accepted at par and interest as payment on account of purchase money as to any excess over the amount of said bonds of said Alabama & Georgia Manufacturing Company,
31 interest and costs and for such other and further relief as to the court may seem meet and proper.

THE ST. LOUIS TRUST COMPANY,
By its attorney, JOHN C. ORRICK.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, Complainant,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY, THE Huguley Manufacturing Company, W. T. Huguley, Defendants.

Thomas H. West, president of the petitioner herein, The St. Louis Trust Company, trustee in the said mortgage executed by The Huguley Manufacturing Company, defendant, to secure the payment of one hundred bonds each of the par value of $500 by it issued, of date July 17th A. D. 1890, makes oath and says that all of the aforesaid bonds to wit: in number one hundred, are now outstanding and unpaid.

THOS. H. WEST.

Subscribed and sworn to before me this twenty-third day of November, A. D., 1891.
My term expires March 11, 1894.
[SEAL.]

F. P. JONES,
Notary Public.

Ordered that the foregoing petition be filed, that said St. Louis Trust Company be a party defendant, and that the other parties have notice hereof served on them.
This 28th November, 1891.

WM. T. NEWMAN,
United States Judge.

Filing.—Filed in clerk's office, November 28, 1891.
W. C. CARTER, *Deputy Clerk.*

Service of the foregoing petition and order acknowledged, and copy waived this 28th November, 1891.

J. J. ROBINSON, *Trustee,*
By ABBOTT & SMITH, *Solicitors.*
THE ALA. & GA. MANUFACTURING CO. AND OTHER DEFENDANTS AS PER RECORD REPRESENTED,
By N. J. & T. A. HAMMOND,
JOHN C. ORRICK.

32 *Testimony of N. J. Hammond.*

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Bill to foreclose mortgage.

We consent that the testimony of Mr. N. J. Hammond, of Atlanta Georgia, may be taken without a commission by Mr. E. R. Austin as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy, 20 Jan'y, '92.

N. J. & T. A. HAMMOND,
Att'ys for Def'ts as per Record.
ABBOTT & SMITH,
Sol's for Pl'ff.

Mr. N. J. HAMMOND being interrogated answers as follows:

Direct examination:

Q. What connections have you had with the matters mentioned in this bill?

A. I was attorney for the Alabama & Georgia Manufacturing Company and others in the foreclosure of the mortgage, which resulted in the sale of the Alabama & Georgia Manufacturing Company's property by Fisher, receiver, to Graham, Orrick and Chilton. I advised in the procurement of the charter of the Huguley Manufacturing Company, and have been its attorney in this and other matters in Georgia since. When the bill in this case was filed, D. Jannopoulo, president of the Huguley Manufacturing Company, instructed my firm to defend it for that company and W. H. Huguley, as president of the Alabama & Georgia Mfg. Co., retained us to de-

fend that company, by a writing now in our possession, and which will be exhibited in court, and which is not hereto attached because it is our authorization, and should be kept among our private papers. Its date is the 23d of January, 1891. By virtue of that authority, we acknowledged service for the Alabama and Geor-
33 gia Mfg. Co. and filed its answer.

Q. What do you know about the payment of any coupons of the bonds mentioned in said bill?

A. I once held one of said bonds pending the litigation in Troup superior court, and perhaps for some time after. I collected one or two coupons thereon from the Atlanta national bank. Probably one of them or the interest on it was paid to me by Fisher, receiver, at his bank at Newnan, Ga. About this I am not positive. The bond I held belonged to one of my clients, Mr. Nolan. Pending this litigation in United States court, Mr. Fisher, receiver, delivered to me coupons numbered from 1 to 130 inclusive, due Jan. 1st, 1889, and with them a receipt of Denson as attorney at law and in fact for Walker's estate for those numbered from 1 to 20, which receipt was dated Dec. 31st, 1889, and will be produced in court, and also with the packet was a postscript written by Mr. Fisher, signed by his initials only, giving directions about these coupons. I have had correspondence with Fisher and with Denson, and believe I know their handwriting, and think the receipt of Denson is in his handwriting, and the postscript in Fisher's, though I do not profess to be familiar with either handwriting. At the same time Mr. Fisher delivered to me coupons numbered 1 to 130, due July 1st, 1889. These two batches of coupons are those exhibited to Mr. Currier, cashier of the Atlanta national bank, when he testified in this case about the stamp with which they are canceled. I have also coupons due Jan. 1st, 1891, numbered 67 to 74 inclusive, and 111 to 124 inclusive, and those due July 1st, 1891, numbered 67 to 88 inclusive and 111 to 124 inclusive, which came to me from John T. Higginbotham, whom I had instructed to pay the same. All these coupons and the postscript and receipt will be exhibited on the trial. Mr. Fisher asked that his be returned to him as his vouchers, and for that reason the receipt and postscript are not attached to this testimony. The coupons themselves need not be attached, so far as witness is advised. On the 20th of June, 1891, I was furnished with funds by D. Jannopoulo for the payment of coupons of said Alabama
34 and Georgia Manufacturing Co., and undertook to do so, pursuant to the advertisement in the *Constitution* already mentioned in the agreed testimony. I furnished Mr. Higginbotham with money to pay those which he paid. I believe none were presented for payment at my office or to me. He was also in the same way authorized to pay as by the later advertisements appear already in the evidence, and his two batches represent, so far as I am advised, all that he has paid. From the 20th of June, 1891, I as agent for D. Jannopoulo, president of the Huguley Manufacturing Co., have been prepared to pay on demand all the coupons and

the interest thereon which were mentioned in the advertisement by us, and in our letters to J. J. Robinson, already in evidence; and I was about to advertise a like readiness to pay the interest due January 1st, 1892, but plaintiff's counsel, Mr. Abbott, agreed with me that I need not incur that expense, saying his clients would refuse to accept the same. I called on Mr. Currier, and told him I wished to pay the coupons and interest on the bonds held by the Atlanta national bank, remarking that I had been told by Jannopoulo that they had accepted their interest. Mr. Currier said, "Yes," and was getting out the bonds to cut off the coupons, when Mr. Abbott casually came into the bank, and I remarked to him that I was about to pay that interest. He told Mr. Currier not to accept it. I replied that they did accept the interest before from Jannopoulo, and Mr. Abbott said: "Well, I suppose that was a mistake, and Mr. Currier had better not accept it." Then Mr. Currier declined to accept it.

Q. When and why did you first make inquiry at said bank about the interest due July 1st, 1890?

A. On the morning of the 2d of January, 1891, Mr. W. T. Huguley, one of the trustees for the bondholders, came into my office, and asked if Jannopoulo had made arrangements to pay the interest at the Atlanta national bank as he had done before, and be-
to cause I did not know, he asked me to inquire at the bank. I went the bank during the banking hours—at what time in the morning I do not recall,—saw Mr. Romare in his room, and told him that Mr. Huguley had sent me to make said inquiry. He said that no arrangements had been made for the payment there of the coupons
35 due in July, 1890. I asked him if his bank would pay upon a telegraphic request from Jannopoulo. He replied it would. I returned to my office, and informed W. T. Huguley of the above conversation between me and Mr. Romare, and he wrote a dispatch to be sent to Jannopoulo, the contents of which I do not know, and Mr. Huguley left my office saying he would return home to West Point in the afternoon, and asking that I telegraph him about the matter. In the afternoon, after banking hours, a dispatch from Jannopoulo to Huguley, addressed to the care of myself or my firm, came, and I read it. As I recall its substance, it was that he had already furnished the funds to the Atlanta national bank to pay the said interest. With that dispatch I went to the Atlanta national bank, and entered in the rear because the front door was closed, because after banking hours, and Mr. Romare being absent, I saw Mr. Currier, and either showed him the dispatch or told him the substance. He replied to me that that was correct and that it had been published in the *Atlanta Constitution* that they would pay said coupons when presented. I had told Mr. Romare in the morning and I repeated to Mr. Currier in the evening, that that was perhaps the last day for demand of payment of the coupons, and stated to Mr. Currier that some persons might claim that the coupons ought to be paid at West Point, and to guard against that I wished he would telegraph at once to his correspondence there to pay all

of those coupons when presented. He promised to do so. Whether the date of them was mentioned I do not recall, but I know what coupons we were talking about, and that he told me of the advertisement in the Constitution. I then went to the telegraph office, and telegraphed Huguley at West Point, and, by mail, I enclosed Jannopoulo's telegram to him there. A few days after that in the bank, I asked Mr. Romare whether any of those July coupons had been presented at the Laniers at West Point for payment, and he said the Laniers had reported the payment of some due January, 1891, but none of those due July, 1890. I replied to him that no one had authorized the Laniers to pay coupons due January, 1891, to which he made no reply. I never heard of any mistake in the telegram by Currier until he testified in this case. It will be proper to state that W. T. Huguley desired the arrangement made
36 for paying the coupons at the Atlanta national bank, and my request for it to authorize payment at West Point was my own suggestion from abundant caution. I knew, however, that the office of the Laniers was not the office of the Alabama and Georgia Manufacturing Company, and that place was designated by the Atlanta national bank in West Point because the Laniers were the correspondents of the Atlanta national bank.

Q. State anything else you know to benefit the defendants.

A. I do not recall anything else at present, except that when the bill was filed and we had been employed to defend it, I asked Mr. Abbott, complainant's solicitor, to tell me at whose instance the bill was filed, and what holders of bonds were seeking to foreclose the mortgage, telling him that Mr. Jannopoulo would pay their interest if they would accept the same. He declined to answer, saying that we had no right to know, that Robinson, trustee, had a right to foreclose the mortgage without disclosing for whom he was acting. I think I asked Mr. Romare also before any defense was filed in the case, but whether he declined to answer or professed not to know, I do not remember. At any rate he did not tell me any one for whom Robinson was acting.

N. J. HAMMOND.

Sworn to and subscribed before me this 20th Jan., 1892.

ALEX. W. SMITH,
Notary Public, Fulton Co., Ga.

The within testimony of N. J. Hammond taken before me as sole commissioner, the 20th day of January, 1892.

EDWARD R. AUSTIN,
Sole Com'r.

Testimony of Kelly and Romare.

Bill to foreclose mortgage.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

37 We consent that the testimony of Mr. Thomas J. Kelly and Mr. Paul Romare, both of Atlanta, Ga., may be taken without a commission by Mr. E. R. Austin, as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy.

ABBOTT & SMITH,
Solicitors for Plaintiff.
N. J. & T. A. HAMMOND,
For Defendants as per Record.

Mr. THOMAS J. KELLEY being interrogated, answers as follows:

Direct examination by Mr. ABBOTT:

Q. What business were you engaged in the latter part of December, 1890, and the first part of January, 1891?

A. I was manager of the advertising department of the Constitution, in this city.

Q. How did the Constitution Publishing Co. get its mail at the time inquired about?

A. We got it from a box in the post office.

Q. How frequently during say from the 27th of December, 1890, up to and including the 2d of January, 1891, did the Constitution send to get the mail?

A. Four times a day the year round.

Q. Here is a letter dated December 29, 1890, addressed to the Constitution Publishing Co., signed by D. Jannopoulo, president, attached to Mr. Jannopoulo's interrogatories. Look on that letter and explain what the words "Entered January 1, 1891," mean.

A. That is a mark in our office, meaning that my checking clerk entered that to appear on the next day Jan. 2d.

Q. In whose department of the Constitution Publishing Company's business would that letter fall?

A. In my department.

Q. Exclusively?

A. Yes, sir. If there was money in it it might accidentally be thrown into another department.

Q. Did or not any money come in this letter?

A. I do not think so. I do not remember.

Q. How early on each day at the time required about would letters enclosing orders for advertisements have to reach you in order to be inserted in the paper next day?

38 A. By eight o'clock at night. I do not believe we have been getting any mail from any place at night that late except Georgia mail from Augusta. But if we got an advertisement at that hour it would appear the next day.

Q. State whether or not there was any mail during the time inquired about arriving at the post office in the evening at that time.

A. I do not know.

Q. Suppose the mail came by the W. & A. R. R. at 6:40 in the evening, on the days inquired about, would or would not the Constitution Publishing Company get the mail directed to it through its drawer at the post-office after that hour?

A. It would.

Q. If this letter had reached Atlanta through the mails, arriving here at 6:40 or earlier on the 31st of December, 1890, would or would not the advertisement referred to in this letter have been inserted in the *Constitution* on the morning of the first of January, 1891?

A. In all probability it would.

Q. Have you any personal recollection of this letter, and that advertisement?

A. I have no recollection of them, except as appears on the records in the books at my office.

Q. From your method of doing business, what are you willing to state as to the time when that advertisement was put into the newspaper after it reached your hands?

A. We inserted it as soon as we received it.

Q. From all the facts and circumstances, and looking at the letter, what is your recollection as to the time when that letter was received?

A. As I stated before, I have no recollection at all of it. I can only testify as far as our records show.

Q. If that letter had been received by you prior to eight o'clock p. m. on the 31st of December, 1890, what issue of the *Constitution* would that have appeared in?

A. I do not stay as late as eight o'clock at the office. I generally go home about six o'clock. If the letter had been received after that time, our night clerk would have manipulated it, or seen to its proper direction; and it would probably have appeared in the next day's issue.

39 Cross-examination by Mr. HAMMOND:

Q. Was there any difference in time between the time when the advertisements for the Sunday paper were made up, and those for other days?

A. No difference.

Q. Is not the Sunday edition made up more completely than any other paper by a fixed hour of the day?

A. No, sir. The limit is no later for the Sunday paper than any other.

Q. Do you know who put the words, "Entered, Jan. 1, 1891," on this letter, before referred to?

A. The checking clerk.

Q. Who put the words "1891," inclosed in a circle, on the same letter?

A. The advertising clerk.

Q. Do you know who wrote those words in red ink on Mr. Jannopoulo's letter above referred to?

A. I do not know.

Q. Do you know who wrote on the advertisement itself, enclosed in that letter, and attached to Mr. Jannopoulo's interrogatories as the next exhibit, the words, "Jan. 2d, D. 3. T."

A. The foreman of the printing department, Mr. Pilgrim.

Q. Who went after the mails at that time?

A. Some one of the clerks in the office. Sometimes one would go, sometimes another.

Q. Did they get very much or very little mail?

A. We got a very large mail—a sack about 20 in. x 18 in. full.

Q. That sack was carried each time to the post office?

A. Yes, sir.

Q. When the mail came to the *Constitution* office, to whom was it delivered first?

A. To Mr. R. A. Hemphill, if he was there. If not, to Mr. Crusselle or myself.

Q. Then what was done to the mail after Mr. Crusselle got it?

A. It was assorted and the personal mail thrown into a box. And after that the remainder was opened and read, and money received was thrown into the cash box, the mail for the weekly depart-
40 ment thrown into that box, and the other mail thrown into the proper boxes.

Q. Does your office connect with Crusselle's?

A. Yes, sir. They are connected by a door. They are practically the same office.

Q. After you got this letter into your possession, what was the regular course of disposing of it?

A. After the mail is gone over by me I separate it, and take the orders, if there are any, and after seeing that they are all right, I hand them over to my advertising checker. Put them on her desk on a hook. She is the one who marked "Entered Jan. 1st, 1891," on letter referred to.

Q. Does that entry indicate the date entered, or the date on which the advertisement is to appear?

A. We enter it on our books on the date stamped, and it appears in the next day's issue. On Sundays we do not go through the mail as systematically.

Q. Suppose the letter came too late Saturday night to get in Sunday morning's paper, when would it appear?

A. In all probability it would not get in until Tuesday.

Q. But if the advertisement were to appear on Jan. 1st., and the first were Sunday, then the stamp on it would be entered Dec. 31st, would it not?

A. Yes, sir.

Q. You know nothing in point of fact, do you, about the receipt of this identical letter?

A. Nothing at all, except what the records show.

THOS. J. KELLEY.

Sworn to and subscribed before me this the 8th day of January, 1892.

[SEAL.] THOMAS J. PEEPLES,
Notary Public.

The above testimony taken before me as sole commissioner, the 7th day of January, 1892.

EDWARD R. AUSTIN.

Mr. PAUL ROMARE being interrogated, answers as follows:

Direct examination by Mr. ABBOTT:

Q. What position did you hold in the Atlanta national bank in Dec., 1890, and January, 1891?

41 A. Vice president.

Q. If the Atlanta national bank received any money on deposit for the purpose of paying the coupons on the bonds of the Alabama & Georgia Manufacturing Company which fell due January 1st, 1890, state when you first received information of such a deposit?

A. It was about midday of the second of January, 1891 that I was informed that the remittance had been made from St. Louis to the Atlanta national bank to pay those coupons.

Q. Do you or not know when in point of fact that remittance reached the bank?

A. I do not.

Q. In whose department of business in the bank do letters enclosing remittances, etc., fall?

A. They first go into the hands of the corresponding clerk. He opens the mail, and if there is anything that is not in his line, he hands it over to the cashier.

Q. Who was the cashier at the time enquired about?

A. Mr. C. E. Currier.

Q. State whether or not the banks close on the first day of January in each year.

A. All the banks close on the first of January, as it is a legal holiday, and no business is transacted.

Cross examination by Mr. HAMMOND:

Q. Did not I visit you in your office on the second day of January 1891, during banking hours in the morning, and tell you that W. T. Huguley wished to know whether Mr. Jannopoulo had provided for paying the July interest coupons and interest thereon, and did you not tell me that he had not?

A. I do not recollect distinctly. If I did say that, I had not heard anything from it. That must have been previous to the information which I afterwards got on the subject.

Q. Did I not in that conversation ask you, when you said that no provision had been made for payment, if Jannopoulo were to telegraph you to pay, whether you would not pay; and did you not reply, "Yes, I will pay if he telegraph?"

42 A. I do not recollect the interview at all. I do not doubt it, but it has escaped my memory.

Q. When in January did you find out what Mr. Currier telegraphed to the Laniers about paying the coupons due in July, 1890?

A. It must have been the second.

Q. Do you know what time of day it was?

A. I do not remember.

Q. When did he tell you that he had telegraphed?

A. I do not know the hour of the day.

Q. Did you tell him anything about whether he had made a mistake in his telegram?

A. I do not recollect whether I told him about any mistake.

Q. Do you remember a conversation between you and me a few days after the second of January, 1891, in the bank, in which I inquired whether the Laniers had paid any of the coupons due July, 1890, and in which you responded that they had paid some due January, 1891, but none due July, 1890?

A. I do not recollect that.

Q. Do you recollect my saying that they had no authority to pay such coupons, but were only instructed to pay those due July, 1890?

A. I remember now that Mr. Currier I think made a mistake in the telegram. He spoke of the coupons due January, 1891, instead of those due July, 1890.

Q. Where does the president of the Atlanta national bank stay?

A. In New York.

Q. He was not in Atlanta at that time?

A. I do not think he was.

P. ROMARE.

Sworn to and subscribed before me this 8th day of January, 1892.

[SEAL.] D. B. DE SAUSSURE,
Notary Public.

The above testimony of Mr. Romare was taken before me as sole commissioner, on the 7th of January, 1892.

EDWARD R. AUSTIN.

43 *Testimony of Torbett.*

Bill to foreclose mortgage.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA & GEORGIA MANUFACTURING CO. ET AL.

We consent that the testimony of Mr. M. B. Torbett of Atlanta, Ga., may be taken without a commission by Mr. E. R. Austin as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy.

ABBOTT & SMITH,
Solicitors for Plaintiff.
N. J. & T. A. HAMMOND,
For Defendant.

Mr. TORBETT being examined answers as follows:

By Mr. HAMMOND:

Q. What is your business, and how long have you been engaged in it?

A. My business is insurance. I have been in it about five years.

Q. If you have ever insured the property once owned by the Alabama & Georgia Manufacturing Company, and now occupied by the Huguley Manufacturing Company, below West Point, Ga., state in what companies you insured it, and in what amounts and how.

A. I insured the property as shown by the paper hereto attached. I insured the Alabama & Georgia Manufacturing Company, previous to its being called the Huguley Manufacturing Company, in the name of H. C. Fisher, receiver, and then after H. C. Fisher sold the property I became acquainted with Jannopoulo and Orrick and Graham through him. And after that I solicited the insurance, and they gave it to me.

Q. At that time what insurance had you on it?

A. $37,500 in two policies. Those were written through the Atlanta home office, and the policies at that time were at the Lowery Banking Company.

Q. To whom was the insurance payable?

44 A. To Robinson, Yancey & Huguley. About a year and a half ago, the whole of the insurance was placed in our hands—in July, 1890, I think. We then had every bit of the insurance except $40,000 that had been placed with W. S. Jackson &

Son, of West Point. About a month or two after that, one of the $10,000 policies which had been written by W. S. Jackson & Son was cancelled, and I was telegraphed to provide for it. I immediately had written two five thousand ($5,000) dollar policies. Since that time, as the insurance agents of the Huguley Mfg. Co., through D. Jannopoulo, whom I recognized as president, and from whom I received my instructions, I have carried on the risk $200,000, on printed form hereto attached, in the companies and for the amounts as shown in the attached statement, loss payable clauses being as therein stated; but I do not confine my testimony to the names of the companies, for in our business there are often changes in the companies, but we have always kept the property of the Huguley Mfg. Co., covered to the amounts as represented in this statement.

Q. Is that insurance, payable to the different persons and to the different amounts there stated, in a mere arbitrary thing, or was it fixed by inspection?

A. When it was turned over to me, I went there, went over the mill, and made a thorough inspection.

Q. What proportion is there between the value of the property and the $200,000 of aggregate insurance represented on said list?

A. I thought it worth more than $200,000, or else would not have taken the risk.

Q. What was and is the usual proportion between actual and insurable value?

A. On manufacturing property like this we always have actual value at least 15 per cent or 20 per cent. larger than the insurable. I visit the mill at least twice a year for inspection.

Q. Do you know whether in that time the property has increased or decreased in value?

A. I do not think it has decreased, for they seem to be making improvements.

By Mr. ABBOTT:

Q. Have you any experience as an adjuster of losses?

45 A. I have adjusted losses several times.

Q. You are acquainted with the rules, customs, etc., of adjustment of losses?

A. Yes, sir.

Q. In case of a loss under the fire policy the company is not restricted to or bound by the estimate when the policy is taken out, is it?

A. No, sir.

Q. Is it not always subject to revision?

A. Certainly it is.

Q. Suppose it had turned out to be true that this property was not worth $200,000, upon adjusting the loss, but was worth much less, then would not all these three interest- be pro-rated? For example, suppose the property had been worth only $125,000, and it had been destroyed by fire, then would not J. J. Robinson, Yancey,

and Huguley, as trustees, and the St. Louis Trust Co., for other bondholders, together with the other interest represented, pro-rate in the insurance?

A. In that case, if totally destroyed, and it was proven by adjustment that the property was worth only $125,000—then Robinson, Yancey and Huguley trustees, and the St. Louis Trust Co., for bondholders and the Huguley Mfg Co., would be indemnified as the amount of insurance with loss payable clause in their favor would be to the total amount of loss; but the above is a mere supposition, and owing to the fact that the companies have their special agents who are continually making inspections, those special agents would not allow their companies to remain on a risk to such a great extent over insured as the above supposition would imply.

Q. Now suppose the property should turn out upon adjustment of the loss after the fire, to be of any value less than $200,000, then each interest above represented would draw upon the fund in the same proportion as you answered above?

A. Yes, they will be reimbursed or indemnified as the amount of insurance is to the actual loss, in all cases.

By Mr. HAMMOND:

Q. Were you the only insurance agent of those companies mentioned in that list who inspected it from time to time?

46 A. Special agents of the other companies inspected it also.

Q. Suppose the policies had been too large in their estimation, what would they have done?

A. Canceled them immediately, as they always consider overinsurance hazardous.

Q. Did either W. T. Huguley or Robinson know how that insurance was placed, at any time within the past year, before this suit was brought in January, 1891?

A. Yes, sir. W. T. Huguley knew it.

Q. State whether or not any dissatisfaction has been expressed by any one.

A. None. W. T. Huguley has been in my office a number of times, and I allowed him to look over the statements.

Q. Do you know Mr. Robinson personally?

A. No, sir.

By Mr. ABBOTT:

Q. You do not know that Mr. Robinson ever knew of the condition of the insurance, do you?

A. I have an indistinct recollection of meeting him,—but do not remember clearly—about the time the transfer was made by H. C. Fisher.

Q. You do not remember having any conversation with him about this insurance, do you?

A. No, sir.

By Mr. HAMMOND:

Q. Do you know for how much it was insured when H. C. Fisher had it?

A. I think it was $200,000. There was some $13,000 on the stock. In case of loss these parties would participate in that $13,000 just as in the other.

By Mr. ABBOTT:

Q. Whether these trustees would participate in the fund produced by the destruction of the stock would depend on the mortgage, would it not?

A. The insurance company would not recognize any mortgage at all. The policies themselves have the loss payable clause. They would take a receipt signed by those loss payees, before paying any loss.

M. B. TORBETT.

47 Testimony taken before me as sole commissioner, the 29 of December, 1891,

EDWARD R. AUSTIN.

Sworn to and subscribed before me this 30th day of December, 1891.

[SEAL.] JNO. K. OTTLEY,
Notary Public, Fulton Co., Ga.

The Property of the Huguley Manufacturing Company.

$40,000 On their four-story, metal roof brick factory building, including pipes and piping therein; known as the "Huguley Manufacturing Co.'s cotton mills;" operated by water power on the Chattahoochee river, about seven miles below West Point, Ga.

$140,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures, and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$10,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$5,000 On their three-story stone metal roof picker house, including pipes and piping therein, located eighteen feet on the south of the main building.

$2,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps, and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$3,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$200,000.

48 $200,000 total insurance permitted.

Permission granted to run until nine o'clock at night, to set up and adjust machinery and to make all ordinary repairs.

To attach to and be made part of policy No. — of the —— Insurance Company of —— which covers *pro rata* on each of the above items to the amount of — dollars. —— ——, *Agents.*

Printed form referred to in the within testimony.

E. R. AUSTIN, *Com'r.*

To D. Jannopoulo, president:

Below find record of policies as renewed and in existence July 22, 1891, on Huguley Manufacturing Co., near West Point, Ga., with loss payable favor: First mortgage bond holders, trustees, J. J. Robinson, W. C. Yancey and W. T. Huguley.

London and Lancashire	1842332	Feb.	5,	'92,	$12,500	
Liverpool London and G	2773	"	17,	"	25,000	
Scottish Union & Nat'l	1537977	"	17,	"	5,000	
Scottish Union & Nat'l	1537991	Mar.	19,	'92,	5,000	
Commercial Union Assur. Co	102465	"	27,	'92,	12,500	
London Assurance Corporation	1207618	June	25,	'92,	5,000	
					$65,000	$65,000

With loss payable favor St. Louis Trust Co., trustee for bondholders.

Commercial Union Assur. Co	102516	July	8,	'92,	$25,000	
Orient Insurance Company	1243	"	8,	"	15,900	
Rome Fire Insurance Co	25014	"	8,	"	7,500	
Merchants of Newark, N. J	698617	"	10,	"	2,500	
					$50,000	50,000

Without any loss payable clause.

Commonwealth of N. Y	11022	Aug.	25,	'92,	$5,000	
Union Assur. Asso. of London	919636	"	23,	"	5,000	
Scottish Union & National	1543216	M'ch	24,	"	10,000	
Scottish Union & National	1543238	May	26,	"	10,000	
Norwich Union	1956424	July	25,	"	10,000	
American of Philadelphia	3299	"	15,	"	15,000	
Merchants of Newark, N. J	728579	"	12,	"	5,000	
Phœnix of London	3242706	"	22,	"	10,000	
Royal Ins. Co., of Liverpool	4367619	"	15,	"	15,000	
					$85,000	85,000
						$200,000

49 Statement of insurance referred to in within testimony.
E. R. AUSTIN, *Com'r.*

UNITED STATES OF AMERICA,
Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To G. N. Craft and L. M. Harris:

Whereas there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson trustee, and Alabama & Georgia Manufacturing Company and others and

Whereas, J. J. Robinson, trustee, is a material witness in said suit on behalf of the defendant, and can not attend said circuit court in person without manifest inconvenience:

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said J. J. Robinson personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached, and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., on or before the first Monday in November, 1891.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of October, 1891.
O. C. FULLER, *Clerk.*

Direct Interrogatories.

Bill to foreclose mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by J. J. Robinson, trustee, said plaintiff and a witness material for said defendants, who re-
50 sides in Lafayette, Chambers county, Alabama.

1. At whose instance did you as trustee authorize your name to be used in the bringing of said suit? If you had any request in writing attach the same to your answer, and state how you know the signatures thereto to be genuine, and how do you know that the

persons who requested you to sue held or holds any of the bonds of the Alabama and Georgia Manufacturing Company?

2. Upon whose information did you state in your said bill that said Alabama and Georgia Manufacturing Company's property was not insured as required by the contract?

3. What was the date of the request to you as trustee to sue, and the date or dates of such information about insurance?

4. If at any time since said suit was brought, any offer has been made to pay any interest due on said bonds or the coupons thereof, state when and by whom, and if in writing attach original offer.

5. State whether or not you accepted such offer, and if you refused, state all the reasons for such refusal, and if it was upon the request of others, upon whose request, how made, and if in writing attach such request to your answer.

N. J. & T. A. HAMMOND,
JOHN C. ORRICK,
Attorneys for Defendant Corporations.

Cross-interrogatories for Plaintiff.

1. Did you not bring the suit yourself and is it not true that you did not authorize anybody to use your name, but on the contrary did you not take the matter in hand and in pursuance of your duties, as trustee for the bondholders, bring the suit to foreclose the mortgage in this case.

2. State all you know that will benefit the plaintiff.

3. Did you not go to Atlanta yourself with your counsel, Mr. Denson, and advise with counsel of record in the case before you brought the suit.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Solicitors for Plaintiff.

51 STATE OF ALABAMA, }
Chambers County, }

By virtue of a commission issued out of the honorable circuit court of the United States for the northern district of Georgia, to us directed, we have caused J. J. ROBINSON, the witness in said commission named to come before us and being duly sworn true answers to make to the interrogatories to said commission annexed deposes and answers as follows:

To the 1st interrogatory he answers:

I was requested by Mr. L. Lanier and N. D. Denson as executor of the will of M. T. Walker deceased, to institute suit to collect the bonds involved in this suit. I received a letter from Mr. L. Lanier

asking me to do so. I did not preserve the letter and I can not attach it. I know it was signed by Mr. Lanier. It was his handwriting, which I know. He also requested me in person.

Mr. N. D. Denson as executor requested me personally. I received no written request from him. Mr. Abbott as attorney for the Atlanta national bank also requested me in person to bring the suit for foreclosure. I know that Mr. N. D. Denson as executor held ten thousand dollars of the bonds, the record of the probate court of which I am judge show this fact. I have no personal knowledge that L. Lanier held any of the bonds. I know some went into his hands as guardian. I also know that he requested payment of interest coupons on some of said bonds. I do not know of my personal knowledge that the Atlanta national bank held any of the bonds. Mr. A. D. Moore, whose wife was entitled to some of the bonds, under the will of M. T. Walker also requested me to proceed to collect the bonds.

To the 2d interrogatory:

He says, I received information about the insurance from Mr. L. Lanier and W. S. Jackson of West Point.

To the 3rd interrogatory:

I do not remember the exact date but it was between the 1st day of Jan'y, 1891, and the time the suit was brought. I had received the information about the insurance for several months prior to the bringing of the suit and up to the time the suit was brought.

To the 4th interrogatory:

52 He says Mr. J. T. Higginbotham, on or a few days before July 1st, 1891, came into my office at Lafayette, Ala., and offered to pay the coupons on said bonds falling due Jan'y 1st, 1891. I told him I held none of the coupons, but if he would leave the money with me as trustee and any of the holders presented them, I would pay them. He stated he was only authorized to pay on delivery of the coupons. This was not in writing.

To the 5th interrogatory:

He says: As stated in his answer to the last interrogatory, Mr. Higginbotham offered to pay on delivery of the coupons, witness held none of the coupons, and Mr. Higginbotham would not pay unless the coupons were delivered to him. I did not accept or refuse, no request to refuse was given me.

To the 1st X Intgy.:

He says, I brought the suit I have told the holders of the bonds frequently that whenever it was necessary to protect their interest, either as to insurance or other matters that they could do so in my name. As to this suit I investigated the facts and thought it my duty when requested by parties, who I believe held more than one-half of the bonds, who were anxious to collect their bonds, to bring this suit.

To the 2 X Intgy.:

He says, nothing more than is contained in his answer.

To the 3 X Intgy.:

He says he first employed Mr. Denson to investigate the matter for him and if he became satisfied that it was witness'es duty to proceed to foreclose, and that there had been default in the conditions of the mortgage or deed of trust, then he could bring suit and also secure additional counsel. The bill was prepared and sent to me for my affidavit. I took it and went to Atlanta, and after investigation thought it my duty to bring the suit, and the suit was filed.

J. J. ROBINSON.

Answered, subscribed and sworn to before us, the witness writing his own answers by our consent and in our presence.

This October 21, 1891.

[SEAL.]
[SEAL.]

G. N. CROFT,
L. M. HARRIS,
Commissioner-.

53 Service acknowledged and copy waived. Let commission issue in blank without order of court.

October 2, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH, *Solicitors, etc.*

UNITED STATES OF AMERICA,
Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To R. A. S. Freeman and L. M. Harris:

Whereas, There is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company,

And whereas, W. C. and L. Lanier are material witnesses in said suit on behalf of the complainants, and cannot attend said circuit court in person without manifest inconvenience.

Now know ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said witnesses personally to come before you, and after being duly sworn, to examine concerning the said suit, agreeably to the interrogatories hereunto attached, and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of November, 1891.

O. C. FULLER, *Clerk.*

Direct Interrogatories.

Bill for foreclosure.

In Circuit Court of United States, Northern District of Georgia.

Filed 21 Jan., 1891.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MFG. CO. ET AL.

54 Interrogatories to be exhibited to W. C. Lanier and L. Lanier, material witnesses for the plaintiff in said cause and who reside in Chambers in the State of Alabama, and whose post office address is West Point, Georgia, and who do business in West Point, Georgia.

For L. Lanier.

1. What business are you engaged in and where do you do business and with whom are you associated in business?

2. Are you or not a holder and owner of any of the bonds of the Alabama & Georgia Manufacturing Company? If so how many of such bonds? And coupons, if any?

3. Has or has not the interest been paid on such bonds as you hold, and if so, when was each installment of interest paid? Are you or not now the holder of any unpaid coupons of said company for interest on its bonds, if so, how many? Please give the number of such coupons, the date of maturity of the same, and the aggregate amount. State fully.

4. If you ever made any demand for payment of said interest coupons, state when, where and of whom such demand was made and what was the result of such demand.

5. State whether or not the Alabama & Georgia Mfg. Co. is now doing business and was doing business at the time of the filing of this bill. If you say said company was not doing business then state when it ceased to do business and whether it was doing business on 1 July, 1890, and 1 January, 1891.

6. State whether or not said Ala. & Ga. Mfg. Co. had any office in West Point, Georgia, on the 1 July, 1890, or on the 1 January, 1891, and whether or not said company had any officers or agents at said place or elsewhere at the dates inquired about. If you state that said company ceased to do business at any time. State when and under what circumstances. State fully. State whether or not it had any property, money or effects of any kind in West Point or elsewhere on the dates above inquired about.

55 7. If you took any steps to procure action to be taken by the plaintiff Robinson, trustee, state what steps you took and when. And what was the result of same if anything.

8. State what amount of insurance against loss by fire has been kept on the property known as the Ala. & Ga. Mfg. Co.'s mills, if any, say since the first of January, 1890, and how you know this? In whose favor were the policies of insurance written, if any such policies were placed on said property. State fully.

9. What do you know if anything about the condition of said property now? State what was the condition at the time of the filing of this bill in this cause. Answer this question as to the state of preservation the property was in at the time inquired about. If the property has been repaired any time since it passed out of the hands of the said Ala. & Ga. Mfg. Co., state what repairs have been made. State fully both as to realty and personalty.

10. If any offer by any person to pay interest coupons on said bonds, falling due 1 July, 1890, was made. State by whom such offer was made and when and where. State particularly.

11. What amount of said bonds do you control, either in your right or as agent or trustee, if you control any and state whether or not you exercise your election at any time to treat the whole of said principal and interest as due and to whom, if any one, you gave notice of such election.

12. Was or was not the property of the Ala. & Ga. Mfg. Co. sold at public outcry in January, 1890? What announcement if any was made at said sale as to what if anything said property was sold subject to.

13. What claim, if any, did W. T. Huguley make at that time or since as to his being interested in said property? What did you ever hear him say on the subject? What do you know if anything, about his being interested in said property now in the property involved in this litigation?

14. Did you ever see any paper, writing or contract between any of defendants or other persons with defendants or some of them on the subject of the property covered by the deed of trust set up in this cause? If so, where did you see it? Have you a copy of it?
56 If so, attach to your answer. If you have no copy state the contents of the same fully. State the name of each party thereto—the interest if any he represented and the name of each signer. State fully.

15. State all the facts you know going to show that W. T. Huguley was interested in said property at the time of the filing of this bill in this cause.

16. Suppose it should have appeared that Mr. Currier, cashier of the Atla. nat'l bank had wired you on the 2nd of Jan'y, 1891, to pay July, 1890 coupons of Ala. & Ga. Mfg. Co., bonds—what effect if any would such a telegram have had?

17. Explain the method adopted by the parties at interest for the payment of the interest coupons on said bonds due Jan'y 1, 1890. If such coupons were paid.

18. State all that you know that will benefit the plaintiff as fully as if interrogated thereto.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH, *Sol's for Plaintiff.*

For W. C. Lanier.

1. What business are you engaged in and where do you do business.

2. What do you know if anything about the payment or non-payment of interest coupons of the Ala. & Ga. Mfg. Co., bonds falling due July 1, 1890? State fully and how you know the facts about which you testify.

3. State whether or not the Ala. & Ga. Mfg. Co., had on the 1, July, 1890, or the 1 Jan'y 1891, any office or place of doing business in West Point, Ga., or elsewhere? State whether or not it had any officers or agents at said times and place or elsewhere? What property, money or effects, of any kind did said company have if any at said time and place.

4. If you state that said company ceased to do business at any time state when.

5. If you know what steps if any the holders of said bonds and coupons took looking to the bringing of the suit in this case, state what steps were taken, by whom and when, and with what result.

57 6. State all that you know that will benefit the plaintiff.

7. Do you know or not as to what amount of insurance against loss by fire has been kept on the property known as the factory property now in the possession of Huguley Manufacturing Co., since 1, Jan'y, 1890—to whom payable in case of loss. State fully.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Sol's for the Plaintiff.

Cross Interrogatories.

In Circuit Court of U. S., N. Dist. of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

For W. C. Lanier and L. Lanier to be answered by each of them.

1. When and where was the last election for president of the Alabama & Georgia Manufacturing Company held? Was not W. H. Huguley then elected president?

2. Was not W. H. Huguley for many years past and is he not yet

a member of the firm of W. H. Huguley & Co., of West Point, Ga.? At whose store or place of business was the office of the Alabama & Ga. Mfg. Co., kept each year since 1870 up to the putting of said A. & G. Mfg. Co., in the hands of a receiver?

3. How long have you had connection with said company and in what capacities or relations? Who have been its financial agents since 1870?

4. Did not said W. H. Huguley & Co., have on their store or on their curtains in the store a sign or signs that the office of the Ala. & Ga. Mfg. Co., was there? If so when was said sign removed or taken away if at all. Was it not still there from the time the firm was the financial agent of said company until the sale of their place of business in November, 1891?

5. Have not each member of W. H. Huguley & Co., lived in West Point, Ga., for many years past and do they not still live there?

6. Give the place or office at which the interest on any
58 bond held by you has been paid each year since its issuance? When was it paid at or by the Atlanta N. bank? If you did demand it at said bank of what person and when?

7. If you made any demand for interest on any such bond when it was not paid state of whom, when and where and what reason was given for its non-payment? Why did you not demand payment at Atlanta N. bank where it was advertised to be ready for bond-holders?

8. Did not Jno. T. Higginbotham as agent for the present owners offer to pay you the interest this year 1891, and did you not refuse to accept the same? What did Higginbotham offer and what did you refuse and in refusing what reason did you give therefor?

9. What is your business? If bankers, have you not long been the correspondents at La Grange of the Atlanta national bank? What interest have you in any factory and how far is it from the Ala. & Ga. Mfg. Co.'s, former factory mortgaged to secure your bonds and coupons?

10. Were not W. H. Huguley rival bankers and owners of large interests in the Ala. & Ga. Mfg. Company and residing in West Point while you were? Were you not and are you not yet on hostile terms with W. T. Huguley? When did you speak to him last or he to you on friendly terms? When to the other members of that firm?

11. What correspondence did you or either of you, or your firm or bank have by letter or telegram with the Atlanta national bank, or any of its officers in December, 1890, or in January, 1891, about the bonds of the Ala. & Ga. Mfg. Company or the interest thereon? Attach the letter or telegrams sent to you and any sent by you to it or to any such officer? And if you can not attach originals attach copies.

12. Did not Mr. Currier telegraph your firm or bank on the 2d of January, 1891, to pay the July, 1890, coupons or words to that effect and what reply did you make? Attach that telegram and if you

can not then a copy? What did he telegraph you that day? What did any one from Atlanta national bank telegraph you that day?

13. When you received that telegram which coupons did you then have in your possession and which did you control? What
59 effort, if any, had you made to have them paid and what did you make after that dispatch was sent you? Did you not claim and announce in West Point that the telegram of 2 January, 1891, authorized payment of coupons due January, 1891, but not those due July, 1890?

14. When one of you or both of you were the financial agents of said Alabama & Georgia Manufacturing Company to what extent was it insured and to whom were the policies payable? Since said bonds were issued to what extent each year has the same been insured and to whom payable? State all the particulars so far as you know on which the insurance since said Alabama & Georgia Manufacturing Company's mill was sold by Fisher, receiver, differ- from the insurance had and kept thereon before said receiver was appointed and pending the litigation which resulted in said sale?

15. How do you know how said property is insured? If any complaint about this insurance has been made except in this pending suit by whom and when and to whom was it made?

16. Was not Robinson trustee, requested in writing to take action in this case? Who got up that writing—who began the project, who disclosed or wrote it and who signed it? When and where was each signature made thereon and who delivered it to Robinson and when? Where was that paper when you last saw it?

17. Who employed counsel to file this bill and what part of their fee did each contract to pay and how and when are counsel to be paid?

18. Did not the Atlanta national bank pay W. C. & L. Lanier $1414.40 on about the 18th of July, 1890 on account of sixty-eight coupons and interest thereon cut from some of said bonds of the Ala. & Ga. Mfg. Co.? Give the numbers of the bonds and the ownership of each on the 10th July, 1890, and during January, 1891, and the dates of the maturity of said 68 coupons?

19. Give a statement from the books of W. C. & L. Lanier of each item of dealings between that firm or either of its members with H. C. Fisher or Atlanta national bank or any other person relating to or connected with the coupons of any of said $65,000 bonds. Have you done so fully?

20. If either of you made any demand for interest on any
60 of said bonds which failed to be paid at any time state when and of whom and where and of which coupons? State whether the demand was in writing and if so who has the writing? If the response was in writing attach the response?

21. If you claim that any coupon was paid by W. C. & L. Lanier or at their office explain how paid? Who furnished the funds to pay with? Who authorized W. C. & L. Lanier to pay at their office? The coupons being payable to bearer did you not simply

advance the money on them and send them or present them elsewhere for payment? If you did more than this last question asked about state all you did and who furnished the money or gave the authority for you to act as paymaster for the A. & G. Mfg. Co.?

22. When was each of you last in the mill or on the mortgaged premises? What examination did you then make of the same and how do you know the present condition?

23. What is the value of the mortgage premises over and above $65,000, and if the insured buildings and machinery were destroyed what would the mortgaged land, site, etc., be worth? What was bid for said mortgage property by those who bought it in January, 1890, of Fisher receiver and what was the next highest bid? Was it not then being sold subject to the mortgage now sought to be foreclosed?

24. Who are the "parties" meant by you in your answer to 18th direct question? Give the name of each one.

N. J. & T. A. HAMMOND,
Att'ys for Def'ts as Per Record.

Answers to Direct Interrogatories.

GEORGIA, }
Troup County. }

By virtue of a commission issuing out of the hon. circuit court of the United States for the northern district of Georgia to us directed we have caused W. C. & L. LANIER the witnesses in said commission named to come before us, and being duly sworn true answers to make to the interrogatories to said commission annexed deposes and answers as follows:

61 To 1st Int. L. Lanier answers: Banking, West Point, Ga W. C. & L. Lanier.

To 2nd Int. L. Lanier answers: Yes, and directly represent over thirty thousand dollars of them, with coupons due on them since July 1st, 1890.

To 3rd Int. L. Lanier answers: Interest was paid on these bonds up to 1st July, 1888, at the Co.'s office in West Point, Georgia, then at office of W. H. Huguley & Co., West Point, Ga. Interest due Jan'y 1st, '89, was not paid until June, 1889, then it was paid by H. C. Fisher, receiver, of the Ala. & Ga. Mfg. Co., whose office was in the office of Harrington Bros., West Point, Ga. The interest due July 1st, '89, was not paid till Jan'y, 1890. It was then paid at the bank of W. C. & L. Lanier, West Point, Ga. The interest due Jan'y 1st, 1890, was not paid till July, 1890. It was then paid by W. C. & L. Lanier at their bank in West Point, Ga. The interest due July 1st, 1890, was not paid Jan'y 1st, 1891, and is still unpaid and I now hold coupons of $35,000 of these bonds due July 1st, 1890, to the amount of $1,400, due Jan'y 1st, 1891, to the amount of

$1,400, and on $34,000 of these bonds due July 1st, 1891, to amount of $1,200, aggregate amount of coupons unpaid $4,000. The coupons due July 1st, 1890, are numbered 13. The coupons due Jan'y 1st, 1891, are numbered 14, and the coupons due July 1st, 1891, are numbered 15.

To 4th Int. L. Lanier answers: I made demand for payment of the interest coupons referred to due July 1st, 1890, on that day and those due January 1st, 1891, on that day, all of W. S. Jackson last elected treasurer of the company, at his office in West Point, Ga., and of Messrs. Harrington Bros. the agents and managers of the company, elected at the July, 1888, meeting of the directors and the last elected agents and managers of the company, at their office which was the last known office of the Ala. & Ga. Mfg. Co.

The response of each, Jackson and Harrington Bros. was they had no funds to pay the interest with.

To 5th Int. L. Lanier answers: The Alabama & Georgia Mfg. Co. is not now doing any business and was not at the time of the filing of this bill. The company was placed in the hands of a re-
62 ceiver under order of Judge Harris on application of A. T. Dallis and other creditors of the company in Oct., 1888. Messrs. Harrington Bros. then managers of the company being appointed temporary receivers. In Dec., 1888, Mr. H. C. Fisher was made permanent receiver with office in office of Harrington Bros., West Point, Ga. In May or about that time in 1889 the mill was shut down and the property all sold in Jan'y, 1890, by Fisher, receiver. It was not doing business on 1st July, 1890, or 1st Jan'y, 1891.

To 6th Int. L. Lanier answers: The Alabama & Georgia Mfg. Co. had no office in West Point, Ga., on 1st July, 1890, or 1st Jan'y, 1891. Nor did it have any office or agents at the dates inquired about, either at West Point or elsewhere. The company ceased to do business under its elected officers in Oct. 1888, it at that time was placed in the hands of a receiver and sold by receiver in Jan'y, 1890, and I know of no money, property or effects of any kind belonging to said Co., in West Point, or elsewhere, the dates above inquired about.

To 7th Int. L. Lanier answers: I did in my own interest and as the agent of others representing in all about fifty thousand dollars of the $65,000 of these bonds after the default in the interest due 1st July, 1890, in January, 1891, request Judge J. J. Robinson, trustee, to proceed to foreclose the trust deed executed by him as trustee to protect the first mortgage bondholders of this company. This request was granted and the suit now pending is the result.

To 8th Int. L. Lanier answers: I do not know. Several large insurance company-s had declined to continue their policies on the property on account of its condition. W. S. Jackson & Son in whose office most of the insurance had heretofore been placed had no insurance on the property, and the large owners of the bonds requested me to learn something of the insurance. I called on Capt.

Lowery of Atlanta and he showed me policies for 60 or $65,000 stating he had learned the property was idle and had requested his company (the Home of Atlanta) to cancel its policy of $5,000 and should recommend the cancellation of all he had, as the policies were of no value, as the property was unoccupied without notice.

63 Hearing Mr. Graham one of the purchasers of the property at the sale 1st January, 1890, could inform me of the amount of insurance on the property, I called at his office in New York, in June, 1890. Did not see him, met his partner, who informed me that there was no insurance there on the property. That the Providence Mutuals "had agreed to write insurance on the property, but learning it was idle declined to issue the policies. My efforts at the time to learn of any insurance failed except this mentioned and Mr. Robinson, trustee, seems not to have been informed in regard to the insurance by the present operators of the property, nor any one else.

To 9th Int. L. Lanier answers: The mill was built in 1868 and 1869 and has been running since except a year or two in 1889 and 1890. During the winter and spring of 1889 part of the metal roof was blown off and more of it was blown off in the spring of 1890 and the machinery was damaged by rain and rust very much then. The machinery has reached the (age) allotted it by its builders, most of it now being twenty years old. No machinery or repairs of a very substantial character has been added or done, and as a security to the bondholders it is rapidly depreciating in value.

To 10th Int. L. Lanier answers: No offer was made to me by any one to pay interest coupons due July 1st, 1890, at the date of maturity of said coupons or within six months thereafter.

To 11th Int. L. Lanier answers: Thirty-four thousand dollars now. Eleven thousand dollars of bonds then represented by me at the time of the service of this suit, have since been distributed to the heirs of the deceased owner (the coupons of these eleven thousand dollars of bonds remain unpaid till now since 1st July, 1891). I did in January, 1891, consider the interest coupons of the forty-five thousand dollars of bonds which was remaining unpaid on the 1st July, 1890, and not paid on the 1st day of July, 1891, as in default and did treat the whole of said bonds and interest as due and as the representative of others and for myself in connection with others requested Judge J. J. Robinson, trustee, to proceed to foreclose the trust deed to protect the holders of the bonds.

64 To the 12th Int. L. Lanier answers: The property of the Alabama & Georgia Mfg. Co. was sold the first Tuesday in Jan'y, 1890. Announcement was made by the receiver who was selling the property that the sale was made subject to the trust deed (now being foreclosed by Judge Robinson, trustee).

To Ints. 13, 14, 15, L. Lanier states he is instructed not to answer.

To 16th Int. he answers: I know nothing more except as answered in these direct and cross answers.

To 17th Int. L. Lanier answers: No telegram was received by me

from the Atlanta nat'l bank or Mr. Currier, cashier, on the 2nd of Jan'y, 1891. If I had have received such telegram I would not have accepted the money on the defaulted coupons.

To 18th Int. L. Lanier answers: They were presented at the bank of W. C. & L. Lanier and was paid by W. C. & L. Lanier or their teller, complying with telegram received latter part of June, 1890, requesting us to pay those coupons maturing 1st Jan'y, 1890.

L. Lanier's Answers to Cross Int.

To 1st X Int. L. Lanier answers: At office of Harrington Bros., in West Point, Ga., in July, 1888, W. H. Huguley was elected president.

To 2nd X Int. L. Lanier answers: I so understood. Don't know whether he is now or not. At the office of W. C. & L. Lanier, till July, 1881, and at the office of W. H. Huguley & Co., till July, 1888; since July, 1888, at the office of Harrington Bros., all in West Point, Ga., till the property was sold in January, 1890; since January, 1890, it has had no office here.

To 3rd X Int. L. Lanier answers: From 1868 till July, 1881, I was a stockholder and most of the time a director, and our firm, W. C. & L. Lanier, were treasurers and managers of the company. In July, 1888, I was elected a director; held no office. W. C. & L. Lanier from 1868 or 1870 till July 1, 1881. W. H. Huguley & Co. from that time till July, 1888, when Harrington Bros. were elected managers of the company's business and served till receiver was appointed.

To 4th X Int. L. Lanier answers: Yes, on one of the curtains, and part of it is there still.

65 To 5th X Int. L. Lanier answers: W. H. Huguley, I think, considered West Point his home until within the last few years. Since the latter part of 1888 or first part of 1889 he has spent most of his time on his farm in Alabama. I have not seen him about the store of W. H. Huguley & Co. since latter part of 1888 or first part of 1889. Mr. Nolan lives in West Point, and I think Mr. W. T. Huguley considers West Point his home.

To 6th X Int. L. Lanier answers: The first interest coupons of the Alabama & Georgia Mfg. Co.'s bonds were due 1st July, 1884, and these and the subsequent maturing coupons to 1st July, 1888, were paid at the office of W. H. Huguley & Co., the then office of the company. The interest coupons due January 1st, 1889, were not paid till latter part of June, 1889. They were paid then by H. C. Fisher, receiver of the company, at the office of Harrington Bros., in West Point, Ga.

The interest coupons due July 1st, 1889, were paid at the bank of W. C. & L. Lanier in Jan'y, 1890.

The interest coupons due 1st Jan'y, 1890, were paid at bank of W. C. & L. Lanier in West Point, Ga., June and July, 1890. I never

collected any of these interest coupons of the Atlanta nat'l bank or from any one else except as stated in this answer. I made no demand for this interest on the Atlanta nat'l bank.

To 7th X Int. L. Lanier answers: I made demand of W. S. Jackson the last treasurer of the company and Harrington Bros., the last agents and managers of the company at the office of Harrington Bros., in West Point, Ga., which was the last known office of the Alabama & Georgia Mfg. Co. on the 1st of July, 1890, for payment of the interest coupons due that day and on the 1st day of Jan'y, 1891, for the interest due that day. Both refused payment, saying they had no funds of the company. The interest on these bonds is stipulated in these interest coupons as payable at the companies' office in West Point, Ga. It had no reason to expect this interest to be paid in Atlanta and did not see the advertisement referred to.

To 8th X Int. L. Lanier answers: J. T. Higginbotham on 1st July, 1891, said he would pay the interest coupons due 1st Jan'y, 1891, but offered no money. I asked him if he would pay
66 the interest due that day 1st July, 1891. He answered no; he had no funds to pay that interest with. This conversation was in the bank of W. C. & L. Lanier at West Point, Ga. I answered that I declined to accept payment of any interest coupons as I considered the principal as well as the interest due.

To 9th X Int. L. Lanier answers: Bankers at West Point, Ga., have no office at Lagrange, Ga. I am a stockholder and officer of the West Point Mfg. Co. about 3 miles distant from property of the Ala. & Ga. Mfg. Co.

To 10th X Int. L. Lanier answers: W. H. Huguley was not a rival banker. W. H. Huguley & Co., did some banking business at West Point and W. H. Huguley was a stockholder of the Alabama & Ga. Mfg. Co., and W. H. Huguley & Co., were stockholders of this Co., I think, and resided at West Point, Ga. as answered before.

I have not been am not now on hostile terms with any one. Can't remember when I last spoke to him or he to me. Can't remember when I last spoke to W. H. Huguley, he lives on his farm in Alabama and can not remember when I saw him last.

I often speak to J. H. Nolan of the firm.

To 11th X Int. L. Lanier answers: I had none. Our firm received on 3rd Jan'y, 1891, two telegrams marked Exhibit- A and B, which covers all the correspondence I know of with said bank myself or our firm.

To 12th X Int. L. Lanier answers: On the 3rd of Jan'y, 1891, our firm received the two telegrams referred to in answer to 11th cross. We made no reply. We received no other telegram pertaining to this matter.

To 13th X Int. L. Lanier answers: I had in my possession and control the interest coupons numbered 13, 14 and 15 and due July 1st, 1890, and Jan'y 1st, 1891. I had presented the interest coupons due 1st July, 1890, for payment the date they were due, and presented the coupons due on 1st Jan'y, 1891, for payment that day, and

payment of each had been refused. Made no efforts to collect them afterwards except through the trustee, J. J. Robinson. I never received any notice of any change of the place of payment of interest on these coupons. I made no announcement that I can re-
67 member, the two telegrams were received on the 3rd day of Jan., 1891. Neither of them were received before the 3rd day of Jan'y, 1891, under the rules of the telegraph company, no night telegram can be delivered until the day following and the telegram dated 2nd Jan'y, 1891, is a night message and was not delivered to us until the day of the 3rd of January.

To the 14th X Int. L. Lanier answers: I do not remember the amount of insurance at the time asked about. The company was not bonded when we were its managers. I do not know to what extent or to whom payable. The company under its contract was required to keep ample insurance to protect the holders of the $65,000 of first mortgage bonds.

I can not give the particulars asked for. Don't know except that during the time it was in the hands of the receiver $65,000 of insurance was on the property for the benefit of these bondholders.

To 15th X Int. L. Lanier answers: I do not know how this property is insured. Complaints were made by A. T. Dallis, L. D. Hutchison and others, bondholders in my presence during the time the mill was not running and since it has been running.

To 16th X Int. L. Lanier answers: Yes, I wrote him requesting him to take action in the matter, signed only by myself, it was mailed to him and I have not seen it since. Can't say who began the project, it was the desire of nearly all the holders of bonds as expressed to me.

To 17th X Int. L. Lanier answers: I understand Judge Robinson employed Mr. Denson, of Lafayette, Ala., and Messrs. Abbott, Dorsey, Brewster & Howell were associated with him and that their fee would be paid out of the proceeds of the property when sold.

To 18th X Int. L. Lanier answers: We sent 68 coupons due Jan'y 1st, 1900, amounting with interest thereon to $1,414.40 to the Atlanta national bank and took credit for the amount and I append copy of W. C. & L. Lanier's letter enclosing them which gives the numbers (and marked Exhibit C). Bonds 37 to 66 are held by Mrs. L. Lanier guardian; 21 to 36 by Mrs. L. F. Yancey; 99 to 104 to L. D. Hutchinson or B. C. Ferrell; 75 to 88 by A. T. Dallis or to estate of
68 Mrs. Elliott and 129 to 130 by J. W. Burdett, trustee, and these parties I think are yet the holders of these bonds all of these coupons were due Jan'y 1st, 1890.

To 19th X Int. L. Lanier answers: The letter marked Exhibit C covers all the transactions we had with the Atlanta national bank or that bank with ours relating to or connected with the coupons of any of said $65,000 bonds and the statement of W. C. & L. Lanier in account with H. C. Fisher, marked Exhibit D is a full statement of our dealings with Fisher receiver relating to or connected with the coupons of any of said $65,000 bonds and the statement W. C. &

L. Lanier in account with H. C. Fischer, marked Exhibit D, is a full statement of our dealings with Fischer receiver relating to or connected with the coupons of any of said $65,000 bonds and these two statements cover all our dealings with any one relating or connected with the coupons of any of said bonds, that we can find on our books, we have fully.

To 20th X Int. L. Lanier answers: I made demand for interest due on these bonds July 1st, 1890, and Jan'y 1st, 1891, and July 1st, 1891, of W. S. Jackson and Harrington Bros. at the office of these people, which was the last known office of the Ala. & Ga. Mfg. Co., in West Point, Ga., the days the interest fell due, 1st July, 1890, and 1st Jan'y, 1891, and of J. T. Higginbotham on the 1st of July, 1891, for interest due that day, in the office of W. C. & L. Lanier, West Point, Ga., where he had called, he said, to pay interest due 1st Jan'y, 1891. The 1st July, 1890, and the 1st Jan'y, 1891, and the 1st July, 1891, interest was not paid—payment being refused reason given—no funds.

These coupons were numbered 13 maturing 1st July, 1990.
numbered 14 maturing 1st Jan'y, 1891.
numbered 15 maturing 1st July, 1891.

Demand was not in writing.

To 21st X Int. L. Lanier answers: The interest coupons paid by W. C. & L. Lanier were those maturing July 1st, 1889, paid out of funds deposited Dec. 31st, 1889, by H. C. Fisher receiver and those maturing Jan'y 1, 1890, paid by W. C. and L. Lanier latter part of June and 1st July were paid by us in compliance with a telegram received from the Atlanta national bank of Atlanta, Ga., requesting us to pay them.

This fully explains the payment made by W. C. & L. Lanier.

69 To 22nd X Int. L. Lanier answers: I was in the mill latter part of 1889 and made such examination as to give me a fair idea of its state of preservation. Its present condition is known from representation of reliable persons familiar with the property.

To 23rd X Int. L. Lanier answers: Very little if any. I should say fifteen or twenty thousand dollars. Fifty-nine or sixty-nine thousand dollars. About one thousand less. Yes, so stated by the receiver.

To 24th X Int. L. Lanier answers: Mrs. L. F. Lanier guardian, Mrs. L. F. Yancey, Mr. L. D. Hutchinson, J. W. Burdett, B. C. Ferrell, A. T. Dallis or Mrs. Elliott. We made no record of ownership.

L. LANIER.

Answered, sworn to and subscribed before us this ——.

[L. S.] L. M. HARRIS, *Com'r.*
[L. S.] R. A. S. FREEMAN, *Com'r.*

Answers of W. C. Lanier.

To 1st Int. W. C. Lanier answers: Banking business in West Point, Ga.

To 2d Int. W. C. Lanier answers: W. C. & L. Lanier held coupons of Ala. & Ga. Mfg. Co. due July 1st, 1890, which were not paid. Neither were those paid that fell due Jan'y 1st, 1891.

To 3rd Int. W. C. Lanier answers: I know of no office in West Point or elsewhere. I know of no office. I know of none.

To 4th Int. W. C. Lanier answers: I understood that the property was sold in Hamilton, Harris county, Ga., in Jan'y, 1890.

To 5th Int. W. C. Lanier answers: I don't know.

To 6th Int. W. C. Lanier answers: I know nothing more.

To 7th Int. W. C. Lanier answers: I do not know.

Answers of W. C. Lanier to Cross.

To 1st X Int. W. C. Lanier answers: I do not know.

To 2nd X Int. W. C. Lanier answers: I do not know. At the office of W. C. & L. Lanier up to July, 1881, after this date W. H. Huguley & Co. and Harrington Bros.

To 3rd X Int. W. C. Lanier answers: W. C. & L. Lanier
70 were stockholders and officers in said company to July, 1881. W. C. & L. Lanier to July, 1881.

To 4th X Int. W. C. Lanier answers: Yes, part of it is there yet.

To 5th X Int. W. C. Lanier answers: I do not know whether W. H. Huguley and W. T. Huguley consider West Point their home or not. J. H. Nolan the other member of the firm has a home here.

To 6th X Int. W. C. Lanier answers: W. C. & L. Lanier collected interest on coupons from the date they were issued till July 1888 at the office of W. H. Huguley & Co., H. C. Fisher receiver paid the interest due Jan'y 1st, 1889, on 31st Dec., 1889, he deposited $2,704 with W. C. & L. Lanier to pay interest due July 1st, 1889.

W. C. & L. Lanier paid said amount for the coupons due July 1, 1889.

In June, 1890, W. C. & L. Lanier paid by request of the Atlanta national bank the interest due January 1, 1890.

The Atlanta national bank reimbursed W. C. & L. Lanier for the amount paid in June, 1890. W. C. & L. Lanier never presented the coupons to the Atlanta national bank. Have no instruction to do so.

To 7th X Int. W. C. Lanier answer: I made no demand. L. Lanier was intrusted with the collections of the coupons. I did not see any advertisement to present coupons at Atlanta national bank.

To 8th X Int. W. C. Lanier answers: John T. Higginbotham asked me a few days since if I would receive the interest on coupons. I answered him no, but that he might see L. Lanier.

To 9th X Int. W. C. Lanier answers: Bankers in West Point have no office in La Grange. I am stockholder and officer in the West Point Mfg. Co., about 3 miles from the Ala. & Ga. Mfg. Co.'s place.

To 10th X Int. W. C. Lanier answers: I do not know. I do not know that I am mad with any one. I kept (no) dates. Whenever business requires we speak.

To 11th X Int. W. C. Lanier answers: The telegrams hereto attached answers all I know anything about.

To 12th X Int. W. C. Lanier answers: See answer to 11th cross.

71 To 13th X Int. W. C. Lanier answers: When W. C. & L. Lanier received telegram January 3rd, 1891, we held coupon No. 13 due July 1st, 1890. We could make no effort as we did not know who to go to. I made no announcement.

To 14th X Int. W. C. Lanier answers: I do not remember. There were no bonds out on property. I do not know. I know nothing about the insurance.

To 15th X Int. W. C. Lanier answers: I know nothing about the insurance.

To 16th X Int. W. C. Lanier answers: I do not know.

To 17th X Int. W. C. Lanier answers: I do not know.

To 18th X Int. W. C. Lanier answers: Yes, sometime, about 1st July, 1890. We did not have the bonds registered and can not give the numbers.

To 19th X Int. W. C. Lanier answers: The statement hereto attached marked Exhibit D, covers W. C. & L. Lanier's transactions.

To 20th X Int. W. C. Lanier answers: I could make no demand, knowing of no officer. L. Lanier was intrusted with collecting the coupons.

To 21st X Int. W. C. Lanier answers: W. C. & L. Lanier paid out the money H. C. Fisher, receiver, deposited with us to pay coupons due July, 1889. Another payment was made at the request of the Atlanta national bank in June, 1890.

To 22nd X Int. W. C. Lanier answers: Do not remember being there in ten years. I have made no examination.

To 23rd X Int. W. C. Lanier answers: I do not know. I do not know.

To 24th X Int. W. C. Lanier answers: I do not know.

W. C. LANIER.

Answered, sworn to and subscribed before us this ——.

[L. S.] L. M. HARRIS, *Com'r.*
[L. S.] R. H. S. FREEMAN, *Com'r.*

72 EXHIBIT A.

Night message.

The Western Union Telegraph Company.

Received at —— 746 p. —— 189–
Dated Atlanta, Ga. 1–2
To W. C. & L. Lanier.

Please say all January coupons of the Alabama and Georgia Mfg. Co. and draw on us coupons attached.

C. E. CURRIER, *Cashier.*

Copy.

EXHIBIT B.

The Western Union Telegraph Company.

Received at —— 189–
Dated Atlanta, Ga. 1–3
To W. C. & L. Lanier.

My telegram of yesterday should have read pay July coupons and interest not January.

C. E. CURRIER, *Cashier.*

EXHIBIT C.

W. C. & L. LANIER,
BANKERS AND MANUFACTURERS,
WEST POINT, GA., *July* 4, 1890.

Mr. C. E. Currier, cashier, Atlanta.

DEAR SIR: Enclosed find for credit, coupons Ala. & Ga. Mfg. Co., due Jan'y1, 1890:

14 coupons No. 12, bonds 75 to 88	$280 00
Interest	11 20
6 coupons No. 12, bonds 99 to 104	120 00
Interest	4 80
2 coupons No. 12, bonds 129 and 130	40 00
Interest	1 60
16 coupons No. 12, bonds 21 to 36	320 00
Interest	12 80
30 coupons No. 12, bonds 37 to 66	600 00
Interest	24 00
	$1,414 40

Yours truly,

W. C. & L. LANIER.

(Copy)

73 EXHIBIT D.

WEST POINT, GA.

H. C. Fisher, rec'r Ala. & Ga. Mfg. Co. in acc't W. C. & L. Lanier, bankers.

1889.				1889.		
Dec. 31.	To c'k.....	$416		Dec. 31.	By c'k	$2704 00
1890.	" "	956	80			
Jan'y 1.	" "	332	80			
	" "	728				
	" "	41	60			
7.	" "	104				
8.	" "	124	80			

(Signed) W. C. & L. LANIER.

Acknowledgment of Service.

Service acknowledged, copy, notice and filing waived. Let commission issue without order of court in blank on application. We name Sevoy Harris, Esq., as a commissioner.

Nov. 19, '91.

N. J. & T. A. HAMMOND,
D'f'ts' Att'ys as per Record.

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

In the Circuit Court of the United States for the Northern District of Georgia.

To L. M. Harris, H. T. Woodyard:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company *et als.*;

And whereas, John T. Higginbotham is a material witness in said suit on behalf of the defendant, and can not attend said circuit court without manifest inconvenience;

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said John T. Higginbotham personally to come before you,
74 and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ closed up under

your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of November, 1891.

[SEAL.] O. C. FULLER, *Clerk.*

Interrogatories.

Bill for foreclosure of mortgage.

In United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by John T. Higginbotham a witness material to said defendants and who resides at West Point, Georgia.

1st. Since the sale of the property of said defendant by Fisher receiver, in January, 1890, what if any improvements, repairs or useful additions of machinery has been made in or upon said mills and premises and by whom and at what cost? How does the condition of said property now compare with its condition at the date of Fisher's sale?

2. If W. H. Huguley & Co., in West Point, had any sign in or upon their place of business as to the office of the said Ala. & Ga. Mfg. Co. state what that sign was, and where it was put up, and where and when if ever it has been removed? State any other facts to benefit said defendants.

N. J. & T. A. HAMMOND,
Att'ys for Def'ts as per Record.

Cross Interrogatories.

1. If you state that any improvements have been added to the machinery of cotton mill state particularly what particular kind or piece of machinery. Where did it come from and from — 75 was it purchased, and what did each piece cost? How do you know the facts about which you testify? Did you buy the machinery yourself or did some one else buy it and how do you know?

2. Who was superintendent of the mill from time the Huguley Manufacturing Co. was organized till time the bill was filed in this case, say February, 1891?

3. How or in what capacity were you connected with the mill? Are you an expert factory man? Do you know enough about a

mill to know when machinery is needed? Where did you learn the business and how long have you been engaged in it?

4. What did Logan Owens have to do with the factory during time inquired about? Was he not superintendent, and is he not a good mill man? Does he not know enough about a cotton mill to be able to tell when machinery is needed or repairs or findings required?

5. How do you — the condition of the mill at time of Fisher's sale and after date?

6. After the sale by Fisher inquired about the Ala. & Ga. Mfg. Co. had nothing left but a sign did it? Didn't that sign even belong to Huguley or Huguley & Co. The corporation didn't own it, did it? Is it not true that the corporation was sold out entirely—that it had nothing left?

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON, *Plaintiff's Solicitors.*

Answers to Interrogatories.

GEORGIA,
Troup County.

By virtue of a commission issuing out of the hon. circuit court of the United States for the northern district of Georgia, to us directed, we have caused JOHN T. HIGGINBOTHAM the witness in said commission named to come before us and being duly sworn true answers to make to the interrogatories to said commission annexed, deposes and answers as follows:

To 1st Int. he answers: There has been repairs on water house making it almost new, and other valuable repairs on factory building, both on the inside and outside, all the operative houses
76 were overhauled and repairs and two new ones built. The machinery was all overhauled, old parts repaired and new parts added. This was done by the Huguley Mfg. Co., under the supervision of Logan Owens and myself, at a cost of between four and five thousand dollars. I think the property now, as compared with the property when Fisher sold it, is at least twenty-five per cent. better.

To 2nd Int. he answers: W. H. Huguley & Co., did have a sign with the lettering: W. H. Huguley & Co., treas. Alabama & Georgia Mfg Co., put up on the front door of the place of business in West Point, Ga. The sign I think was put up in 1887 and has not been removed.

Cross.

To 1st X Int. he answers:

1890.			
Nov. 17th.		From Morten, Ree & Co., Baltimore:	
		100 rollers for spinning frame .20	$20 00
"	10.	100 spindles for winding frame with steps and collars from Riley & Gray, Boston	85 50
Dec.	1st.	From Bridesbury Mfg. Co., Phila.:	
		12 yarn beams	96 00
"	11.	From Morten, Reed & Co., Baltimore:	
		2 sets card clothing	326 04
"	10.	Ryly & Gray, Boston:	
		100 roving flyers (8 inch)	162 80
		18 " " (7 inch)	20 70
		24 " " (7 inch)	27 60
		12 slubbing flyers (10 inch)	22 20
"	20.	From Morton, Reed & Co. Baltimore:	
		Right and left hand angle gear, bevel gear, up gear, pinions, etc., all permanent repairs on cards	243 40
1891.			
Feb.	21.	523 stirrups for spinning frames	13 07
Mar.	4.	42 loom castings, 32 finished and cart geer, 24 cast geer	64 20
Feb.	26.	Bridesburgh Mfg. Co.:	
		4 spin-ing frame cylinders	194 00
Mar.	19.	Stoddard Lovering & Co., Boston:	
		15 sets card clothing complete	1,699 02
July	14.	Morten, Reed & Co.:	
		Copper rollers for cylinders	69 80
June	10.	Bridesburg Mfg. Co.:	
		24 picker shafts and other pieces for cards and looms spinning frames, &c	143 80
		In addition to the above is some other bills for repair material furnished by Pool & Hunt, Balt., R. D. Cole & Co., Newnan, Ga., and West Point iron works of West Point, Ga., which bills have been misplaced. They will approximate about	150 00
		Repairs on water house, underpinning, flooring and roof of factory building	945 00
		Two new houses on premises	503 00
		Repairs on other houses	200 00

77 I know these facts because I was there assisting and superintending these repairs, paying out the money and approving the bills for the same. I made the orders for the machinery and checked the pieces when they came, and saw them added to the machinery and put some of them on myself.

To 2nd X Int. he answers: I was superintendent part of the time and Logan Owens was superintendent part of the time, he had that position when the bill was filed. I am superintendent now.

To 3rd X Int. he answers: While Owens was superintendent it was my duty to look after all the general interest of the mills, buying cotton, wood, keeping mills supplied with help, &c. I am not. I think I do. I have been working with mill machinery since about 1875 in different mills.

To 4th X Int. he answers: He was superintendent part of the time and is a good mill man. He does. He is considered one of the best mill men in the South.

To 5th X Int. he answers: I know the condition of the machinery by having gone there and inspected the same and immediate- after the sale I took charge as superintendent and found the machinery badly rusted and in general bad order.

To 6th X Int. he answers: I have been told that there was money in Fisher's hands and goods belonging to the Co. in New York. I knew there was supplies in Fisher's hands that was not sold to the amount of eight hundred or a thousand dollars. I think the sign belongs to Huguley & Co. I think not. I think they had supplies that was not sold at Fisher's sale in Hamilton at the time the mill was sold.

J. T. HIGGINBOTHAM.

Answered sworn to and subscribed before us this Nov. 24th, 1891.

[L. S.] L. M. HARRIS, *Com'r.*
[L. S.] H. T. WOODYARD, *Com'r.*

78 Service acknowledged and copy waived. Let commission issue in blank without order of court.
Nov. 14, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH, *Sol's — Pl'ff.*

Filed in clerk's office 14 day of Nov. 1891.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA,
Northern District of Georgia.

To W. R. Christian and L. M. Harris:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, and the Alabama and Georgia Manufacturing Company and others, and

Whereas, John T. Higginbotham is a material witness in said suit on behalf of the defendants and can not attend said circuit court in person without manifest inconvenience:

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you are hereby authorized and required to cause the said John T. Higginbotham personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court at Atlanta, Ga., on or before the first Monday in November, 1891.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of October, 1891.

O. C. FULLER, *Clerk.*

79 *Interrogatories.*

Bill to foreclose mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by John T. Higginbotham, a witness material for said defendants, who resides at West Point, Georgia, in said district.

1. Do you know the parties?

2. Where was the financial business of the Alabama & Georgia Manufacturing Co. done before the company was placed in the hands of Receiver Fisher, and where were the coupons to its bonds before that time paid? If there was such a firm as W. H. Huguley & Co.,

who composed the firm, and where did it do business? Where did M. & L. Lanier do business at the same time? What was the business of said W. H. Huguley & Co., and of said Laniers?

3. If any one had possession of the Ala. & Ga. mill's property between the time when the Huguleys controlled it and the time when it was in the hands of Fisher receiver, who were they, and how long did they have such possession; where was their place of business; and did they or not pay any coupons during that time, and if so, to whom?

4. If during the pendency of the suit to foreclose the mortgage under which Fisher receiver sold the property either of said Laniers had any part in the proceedings, state what part and how do you know?

5. What was the state of feeling between said Laniers and W. T. Huguley at that time, and how do you know?

6. What rival interest if any had said Laniers against the Alabama & Georgia Mfg. Co., and when did said interest begin, and when end, if it is ended?

7. If you had anything to do with the mill of the Huguley Manufacturing Co. in January, 1891, state what was your connection with it. If you received any letters from D. Jannopoulo, its president, or any one connected therewith at or about said time, attach the same to your answers, in order to show at what time they were written, and state when you received the same, by what route, they came, and how you know the route and remember the date of receipt.

8. State whether or not the place of business of W. H. Huguley & Co. has been changed since January, 1890, and if not state how long they have occupied the place of business where they now are, and about which you have testified above.

9. If you had anything to do with the payment or offer to pay any of the coupons of the Alabama & Georgia Manufacturing Company's bonds, state when, what notice if you gave, what payments if any you made what offers of payments were refused, if any, and generally all that you did in the premises, and at whose instance you did the same.

10. If you have heard anybody interested as the holder of a bond of the Alabama & Georgia Manufacturing Company, for whose benefit said suit is progressing, say anything touching his holding or reasons for suit, please state when, where and the conversation of each such person pertinent to the business; and state all other facts you may know in favor of defendants in said cause.

N. J. & T. A. HAMMOND,
JNO. C. ORRICK,
Def'ts' Att'y- Except W. T. Huguley.

Cross Interrogatories.

What is your business, are you not employed by the Huguley Mfg. Co.? Have you not been in the service of that company since its organization?

Were you not employed by the Huguleys or D. Jannopoulo between the time of the sale of the property and the time for the Huguley Mfg. Company.

2. State what kind of business you did for your employer during the time inquired about.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH, *Sol's for Pl'ff.*

81 *Answers.*

Bill to foreclose mortgage.

United States Circuit Court, Northern District of Georgia.

STATE OF GEORGIA, }
Troup County. }

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern d-strict of Georgia, to us directed, we have caused JOHN T. HIGGINBOTHAM, the witness in said commission named to come before us, and being duly sworn true answers to make to the interrogatories to said commission annexed deposes and answers as follows:

To 1st Int. he answers: I do.

To 2nd Int. he answers: In West Point, Troup county, Georgia. In the banking office of W. H. Huguley & Co., in West Point, Ga. W. H. Hugul-y, J. H. Nolan and W. T. Huguley composed the firm of W. H. Huguley & Co. and done a general grocery and banking business in West Point, Ga., in the building known as the Huguley building. They were secretary and treasurer for the Alabama & Georgia Mfg. Co. This should be W. C. & L. Lanier and they done a general banking business in West Point, Ga.

To 3rd Int. he answers: It was in the hands of W. H. Harrington or Harrington Bros., as temporary receiver. I think about three months. In West Point, Ga. I don't know.

To 4th Int. he answers: I don't know that either of the Laniers were parties to the suit, but I saw L. Lanier prompting and advising with the att'ys for the defence.

To Int. 5th he answers: Their personal feelings were very unpleasant towards each other, I know, from having business transactions with all the parties and they expressed their feelings freely to me.

To 6th Int. he answers: W. C. & L. Lanier controlled and managed the West Point Mfg. Co., and W. H. Huguley & Co. con-
82 trolled and managed the Ala. & Ga. Mfg. Co., both companies manufacturing the same line and grade of goods. This rivalry commenced according to my recollection about 1882 or 1883. If ended now I do not know.

To 7th Int. he answers: I did. I was cotton buyer and looking after the general interest of the Huguley Mfg. Co. I hereto attach letter and envelope showing when written, when mailed and when received by me, they are marked A and B, and made part of this answer. I can't say what route, as we had two mails during the night at that time, one mail from east and one from west. I know this because the 31st Dec. was our pay day at the mill and after getting the letter at 8 o'clock a. m. hereto attached marked B. I waited for the train known here as the Cannon Ball which arrived at West Point a few minutes after 10 o'clock a. m. When it arrived from Atlanta I was at the car shed and received the money from the express agent. I left at once for the mill and paid off that afternoon.

To 8th Int. he answers: They have not. They have occupied the Huguley building since 1884, latter part of said year, and are still occupying the same building.

To 9th Int. he answers: I have. I paid A. S. Elliott interest on $7,000 bonds in February, 1891. I tendered J. W. Burdett interest on $1,000 bonds which payment he refused. This was in February, 1891. *In* 1st July, 1891, I tendered payment to L. Lanier of the firm of W. C. & L. Lanier who held bonds for several parties, the interest on the bonds that he held, I don't remember the exact amount. He refused, stating they would press the suit to foreclose. About 25th June, 1891, I tendered J. J. Robinson, trustee, for the bondholders of the Ala. & Ga. Mfg. Co., the interest due on bonds of said company (this was the January interest for the year 1891), and demanded of him the coupons. He refused the payment stating he did not have the bonds in his possession. I then tendered N. D. Denson executor or administrator of the estate of M. T. Walker the interest on bonds he held. He declined to accept the payment that day, stating he would write me later what he would do in the matter. He
83 wrote me refusing the payment, stating we will press our suit (this is lost or mislaid so I can't attach it). In July, 1891, I again tendered J. W. Burdett the interest on bonds he held, which he again refused to accept. In July, 1891, I paid Mrs. Sallie Huguley, Mrs. S. F. Huguley, G. A. Huguley and H. D. Huguley the January interest on bonds held by them. Sometime in July or August, 1891, I paid W. C. & L. Lanier interest on bonds held by John F. Hooper. All of this was done at the instance of D. Jannopoulo, president Huguley Mfg. Co., or his attorneys.

To 10th Int. he answers: All the parties to whom I tendered payment of interest, refused, claiming that the interest was forfeited and that the bonds were due thereby and said they would proceed to press their suit to foreclose and that they wanted their money out of

the bonds. J. W. Burdett gave as his reason for refusing payment the matter was in the hands of his attorney.

Answer to Cross Interrogatories.

To 1st X Int. he answers: I am now superintendent Huguley Manufacturing Co. I am. I have been employed in the service of said Co., since 23d June, 1890. I was employed by the Huguleys until 23d June, 1890, from the time of the sale of said property, at which time I was employed by D. Jannopoulo, president, to work for the Huguley Mfg. Co.

To 2nd X Int. he answers: I looked after their general mercantile business and collections.

J. T. HIGGINBOTHAM.

Answered, sworn to and subscribed before us this 20th day October, 1891.

[L. S.] W. R. CHRISTIAN, *Com'r.*
[L. S.] L. M. HARRIS, *Com'r.*

Service acknowledged and copy waived. Let commission issue in blank without order of court.

October 3, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH, *Solicitors, etc.*

ST. LOUIS, MO., *Dec. 29th*, 1890.

John T. Higginbotham, Esq., West Point, Ga.

84 DEAR SIR: We have expressed to-day money for pay-roll to Logan Owens, supt. for last pay-roll, but have omitted to send the amount you asked for yourself. You will therefore take out of the money sent you for cotton purchase what you need, sending us receipt for same, and we will credit your account.

Yours very truly,

HUGULEY MFG. CO.
MARTIN S. TERMENSTEIN, *Sec'y.*

I certify that I received this letter at 8 o'clock a. m., December 31st, 1890.

J. T. HIGGINBOTHAM.
B.

Copy.

(Post marked. Saint Louis, Mo., Dec. 29, 5:30 p. m.)

J. T. HIGGINBOTHAM, Esq.,
West Point, Ga.

"A."

Bill to foreclose mortgage.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY.

We agree that the following testimony of C. E. Currier may be taken by E. R. Austin, as sole commissioner in said cause, and be sworn to before any notary public, subject to any objections as to the competency of the testimony.

N. J. & T. A. HAMMOND,
For Def'ts as per Record.
ABBOTT & SMITH,
Solicitors for Plaintiff.

Direct examination by Col. HAMMOND:

Q. How long have you been connected with the Atlanta national bank, and in what capacity?

A. It will have been four years on the 10th of May, 1891, as cashier.

85 Q. When did Demetrius Jannopoulo first become a customer of the bank by depositing and drawing on it?

A. A short time previous to the sale of the Alabama & Georgia Manufacturing Company's mills by Fisher, receiver.

Q. What deposits did Jannopoulo make on June 30, 1890, and on January 2, 1891, in the Atlanta national bank, and to whose credit was the money placed, his or the Huguley Mfg. Co.'s?

A. On June 30, 1890, a deposit of $3,000 was made, and on January 2, 1891, a deposit of $2,678.00, both to the credit of the Huguley Manufacturing Company.

Q. For what purpose were those deposits made?

A. For the purpose of paying matured interest on the first mortgage bonds on the Alabama and Georgia Manufacturing Co.

Q. Did the letters state the interest to which it was to be applied?

A. I am satisfied they did.

Q. If the bank paid out any of that money, state when and upon what paper it was paid?

A. They paid as per the checks in this account mentioned, which account and checks are hereto attached.

Q. What balance did they leave in the bank on Nov. 7, 1891?

A. It left a balance on Nov. 7, 1891, of $2,083.30.

Q. These checks corresponding with that account were drawn by whom?

A. They were drawn out by myself, the cashier, in payment of the coupons all except two which were drawn by Mr. Malone, one on Jan. 5, 1891, for $4.20, and the other on Jan. 8, 1891, for $289.80.

Q. Do these checks state truly for what they were drawn?

A. They do.

Q. Here is a letter attached to the check dated Sept. 22, 1890, for $315.60. The letter is signed Huguley Manufacturing Co., by M. S. Termenstein, secretary. Was that check drawn pursuant to the order in this letter attached to it?

A. This was a balance remaining to their credit after those
86 other checks were drawn, and after retaining $207 balance to pay the remaining outstanding coupons due January, 1890, as stated in the letter of Sept. 19th, attached to the check, we remitted $315.60.

Q. On the check dated July 11, 1890, there is a memorandum, "Credit W. C. & L. Lanier." Who were they?

A. Bankers of West Point, Ga.

Q. Was it placed to their credit in your bank here?

A. The coupons came from them here to be paid and placed to their credit on the books of the Atlanta national bank.

Q. Has the bank the letters and telegrams received from the Huguley Mfg. Co., Jannopoulo, or anyone representing it in St. Louis?

A. Yes, sir.

Q. They are all in the bank?

A. Yes, sir.

Q. Does the bank preserve the envelopes of its letters?

A. No, sir.

Q. In December, 1890, and January, 1891, how did the bank get its letters from the post office?

A. We have a box and the mail is taken from it by one of the employees early in the morning, and again about 10 o'clock, and again about 2.30 o'clock p. m.

Q. Who was the messenger the latter part of December, 1890, and the first part of January, 1891?

A. I think it was the colored porter.

Q. Who takes charge of the mail when it is brought in?

A. The corresponding clerk, Mr. D. B. De Saussure.

Q. Is he with the bank now?

A. Yes, sir.

Q. Was the first day of January, 1891, a holiday?

A. Yes, sir.

Q. Do you know whether any mail was received Jan. 1, 1891?

A. The mail may have been brought into the bank, but remained unopened until the morning of the 2nd.

Q. Do you know in point of fact whether the letter from Jannopoulo was opened or not on Jan. 1st?

A. No, sir, I could not say positively; only that I did not see it until the 2d.

Q. What time of the 2d?

87 A. I could not say positively whether the morning or the evening.

Q. Do you know at what time that day you saw the newspaper publication in the *Constitution* that the coupons were to be paid at your bank?

A. No, sir.

Q. If you sent any dispatch to W. C. & L. Lanier on the 2d of January about paying coupons on these first mortgage bonds, state when you sent it, and what was the dispatch?

A. We telegraphed Lanier to pay the coupons and charge the amount to the Atlanta national bank.

Q. Did you specify in your dispatch what coupons they were to pay?

A. I presume I did.

Q. If you sent any other dispatch or wrote any letter explaining that one afterwards, state when you wrote or telegraphed, and what you said in that.

A. (See later.)

Q. When were any of those coupons due June, 1890, presented at your bank, not paid if any?

A. I do not remember that any were declined payment.

Q. Has your bank ever refused payment on any coupons presented?

A. No, sir.

Q. How long have W. C. & L. Lanier been the correspondents of your bank?

A. They have been our correspondents for West Point matters off and on since I have been in the bank.

(Direct examination suspended until papers can be produced, but by consent the cross examination proceeds as follows:)

Cross examination by Mr. ABBOTT:

Q. Was not the receiving of this letter enclosing the check to pay the interest falling due in January and July within your department as an officer in the bank?

A. Yes, sir.

Q. Is it not true that it was exclusively within your department to give direction about the application and use of this money?

A. Yes, sir.

88 Q. Are you not certain that the letter and the check for the sum of $2,678.00 from D. Jannopoulo, or the Huguley Mnfg. Co. reached you for the first time on the 2d day of January, 1891?

A. Yes, sir.

Q. The bank did not have any money belonging to the parties previous to that time, to pay this particular interest did they?

A. No, sir.

Q. To go back to the payment of interest of July, 1890, which is the interest accruing January, 1890, and which had to be paid July 1st, 1890, is it not true that a good many of these coupons were paid in West Point by the Laniers?

A. Yes, sir.

Q. Is it not true that the check for $1,414.40 of date July 11, 1890, was for coupons paid by the Laniers at West Point *under the direction of your bank*, and was not that check to cover the amount so paid by them?

A. Yes, sir. It was reimbursing them for the amount so paid. I drew it and placed it to Laniers' credit.

Q. Did not the Laniers pay other coupons besides those inquired about in the last question?

A. Yes, sir.

Q. Please enumerate from those checks the amounts paid by the Laniers besides the one mentioned above.

A. Dec. 24, 1890, $120.00; Jan. 15, 1891, $4.20.

Q. Where was the check of July 11, 1890, for $756.00 paid?

A. I do not know whether here or at West Point.

Q. Do you know that any of these items were paid here?

A. Yes, sir.

Q. Is it not true that the larger portion of these payments as exhibited by this account, on interest coupons, was made by the Laniers at West Point, on the request of the Atlanta national bank?

A. I would have to figure to see which was the larger portion. There was a large amount though.

Q. What position does Mr. Paul Romare occupy in the Atlanta national bank?

A. Vice president.

89 Q. Did he occupy that position in December, 1890, and January, 1891?

A. Yes, sir.

Q. What if anything has Mr. Romare to do with the general correspondence of the bank in the first instance?

A. Unless it is addressed to him or referred to him, the general correspondence comes to me.

Q. Had he anything to do with such correspondence as this mentioned enclosing checks to pay interest from Jannopoulo?

A. I do not think he ever *wrote a letter to them.*

Q. Do you know, as a fact when Mr. Romare first got information that this check $2678.00 was received.

A. It was not reported to him until the 2d of Jan'y, I do not remember the time of day.

Q. If this letter enclosing the check for 2678.00 had been received on the morning of the 31st day of December, 1890, state

whether or not *in due course* the sender of that check would have received a credit for it on the books.

A. He would have received credit on the day we recieved it.

Q. Did this check get to the bank before the 2d of January?

A. It may have been received on the 1st of January, *but did not get into my hands.*

Q. *According to the course of doing business*, could it have been received on the 31st of December, 1890?

A. It could have gotten there on the evening of the 31st of December, and not been opened until the 2d of January, because the 1st of January was holiday. It is possible that it could have gotten there in *the evening*, but it did not get there in the *morning mail of the 31st of December, 1890.*

Q. According to the custom of doing business, is the mail received in the evening opened that evening?

A. No, sir.

Q. And if the next day is a holiday when is it opened?

A. It is not opened until the day after.

(Time having been allowed to produce certain papers, etc., the examination was resumed.)

90 Direct examination by Col. HAMMOND:

Q. If you have found out what you telegraphed W. C. & L. Lanier about payment of coupons in January, 1891, state what you did telegraph, and the dates.

A. On Jan. 2d, 1891, I wired W. C. & L. Lanier at West Point as follows:—"Please pay January coupons of the Alabama & Georgia Manufacturing Co., and draw on us. Coupons attached." This telegram was sent under a misapprehension as to what coupons were to be paid, and when I discovered the error Jan. 3, 1891, I sent this telegram:—"My telegram of yesterday should read: Pay July coupons and interest; not January."

Q. How did you discover your error and when?

A. I believe Mr. Abbott or Mr. Romare told me about it.

Q. What connection had Mr. Abbott with bank?

A. He was their attorney.

Q. How long has he been their attorney?

A. Since my connection with the bank about four years.

Q. Had you or Mr. Romare charge of the coupons prior to Jan. 1, 1891?

A. I was acting under his instructions.

Q. How many of the bonds did the bank hold in its own right?

A. Four.

Q. Do you know what time of day on the 3rd you sent that dispatch?

A. *In the afternoon. After the bank was closed.*

Q. Did you write the paper attached, "marked A," dated Jan. 26, 1891, and deliver the same to Mr. Jannopoulo?

A. Yes, sir.—I wrote it.

Q. I have shown you the coupons from 1–130 inclusive, due July 1, 1889, and now show you those from 1–130 due January 1, 1889, through each of which there is a cut. State whose the cut or stamp is, and why it was put there.

A. It is the cancelling stamp of the Atlanta national bank. The purpose in cutting was that if lost and picked up they could not be collected.

91 Q. On each of these coupons there is a number in red ink. What does that indicate as to the bonds?

A. It indicates the number of the bond from which the coupon was clipped.

Q. While Fisher was receiver, your bank was his financial agent, and the business was done at the Atlanta national bank, was it?

A. Yes, sir.

Q. Mr. Jannopoulo has attached to his interrogatories, which I have before me, copies of letters addressed to your bank as follows:

To P. Romare, dated June 27, 1890.
" " " July 10, 1890.
" " " Aug. 19, 1890.
" Atlanta nat. bank dated Aug. 30, 1890.
" " " " " Sept. 19, 1890, from Termenstein
" " " " " Dec. 29, 1890, " "

a telegram of Jan. 4, 1891, to the Atlanta nat. bank; a letter of Jan. 22, 1891, to P. Romare, vice pres. Which of those letters are in the possession of the Atlanta national bank? Attach the same to your answer.

A. I have made search and those hereto attached are all that can be found.

Q. Where are the envelopes of the letters?

A. They were destroyed.

Q. In your examination yesterday you spoke of W. C. & L. Lanier paying off certain coupons and sending them to you. Were they paid, or simply held by them as bearer, and sent to Atlanta to be paid?

A. I do not know whether they had bought or paid them.

Q. Was there any mark of cancellation on them until you received them?

A. No, sir.

Q. Had you not instructed them to pay all coupons and to send them to you?

A. Yes, sir.

Q. Is it not true when the bank here was paying off the coupons for Fisher, that they frequently took the coupons and held them until Fisher had money to pay?

A. I do not remember about that.

92 Cross examination by Mr. ABBOTT:

Q. Did the Laniers have any instructions about paying the coupons for July, 1890, except in those telegrams?

A. No, sir.

Q. And in those telegrams he was instructed to pay, and not buy the coupons?

A. Yes, sir.

Q. Did you not correct the telegram of January 2d, 1891, as soon as you found out the mistake?

A. Yes, sir.

Q. Is it not true that Mr. Romare, and not myself called your attention to the mistake?

A. I do not remember who it was.

Q. You do not remember asking me about the details of those payments, do you?

A. No, sir.

Q. It would not be in my line of business as attorney for the bank to make suggestions to you concerning such matters, would it?

A. No, sir.

Q. Is your cancellation stamp on any of those coupons which you paid in January, 1891?

A. No, sir.

Q. How came you to give that certificate of January 26, 1891?

A. I did it at Mr. Jannopoulo's earnest request.

Q. Was the request made in person or by letter?

A. In person.

Q. That certificate states the truth, does it not?

A. Yes, sir.

Q. And you turned it over to Mr. Jannopoulo?

A. Yes, sir.

Q. In reference to the coupons paid during Fisher's administration as receiver, do you know where those coupons were really paid?

A. No, sir.

Q. May not they, or a greater portion of them, have been paid in West Point by the Laniers, and the Laniers afterwards drawn on you for the amount to cover?

A. Yes, sir.

Q. Have you enough recollection about it to state how those Fisher coupons were paid?

93 A. No, sir. They came to us from various places. I think some through the Laniers, and perhaps some from the First National Bank of Newnan, Ga.

Q. Were not some paid in Newnan?

A. Perhaps so. Any one who understood that the coupons were *to be paid by the Atlanta national bank would cash them.*

Re-direct examination by Col. HAMMOND:

Q. Why did you not stamp coupons paid after the 2d of January, 1891?

A. Mr. Romare suggested that I should not do it.

Q. Where did the president of your bank live?

A. In New York.

Q. How long has he lived there?

A. For years past.

Q. Where was Mr. Jannopoulo when he asked you for this certificate of January 26, 1891?

A. In the Atlanta national bank.

Q. Had he just come from West Point or was he going there?

A. I do not know.

Q. Does not the correspondence between your bank and W.C.&L. Lanier show whether they paid or whether they bought and sent to you to pay coupons which they sent?

A. It does not.

Q. So far as you know, did they ever pay without instructions from your bank?

A. I think they did on former occasions.

Q. What former occasions?

A. In 1889—the Fisher coupons.

Q. What makes you think they paid any one of the Fisher coupons?

A. I do not know it positively, but think so.

Q. Did not Fisher when receiver have an office at West Point, and have a young clerk there?

A. Yes, sir.

Q. Was not his office over W. C. & L. Laniers', and not at the banking house of W. H. Huguley & Co.?

A. Yes, sir. It was over W. C. & L. Laniers'.

94 Re-cross examination by Mr. ABBOTT:

Q. Is it not the custom for the bank to shut up here on the first day of January of each year?

A. Yes, sir.

C. E. CURRIER, *Cashier.*

Sworn to and subscribed before me this 10th November 1891.

[SEAL.] D. B. DE SAUSSURE,
Notary Public, F. C., Ga.

GEORGIA, }
Fulton County. }

I, Edward R. Austin, acting as commissioner by consent in the above stated case do hereby certify that the foregoing is the evidence taken down by me, and that the papers hereto attached are those alluded

to and testified about by the witness, to wit: The account headed "Huguley Manufacturing Co., St. Louis, Mo., in account with the Atlanta national bank," and the thirteen checks on said bank testified to by said Currier; together with said letter of M. S. Termenstein, secretary, attached to the check of September 22, 1890; and the envelope of six coupons attached to the check of December 24, 1890; a receipt of D. Jannopoulo attached to check of January 8, 1890; three coupons attached to check of February 2, 1891; and also a certificate of said Currier dated January 26, 1891; and letters of M. S. Termenstein, secretary of the Huguley Manufacturing Co., of the following dates: Aug. 19, 1890, addressed to P. Romare vice president; Aug. 30, 1890, addressed to the Atlanta national bank; Sept. 2, 1890, to the Atlanta nat. bank; Sept. 12, 1890, to W. T. Huguely; and Dec. 29, 1890, to the Atlanta nat. bank.

This the 18th day of November, 1891.

EDWARD R. AUSTIN,
Commissioner.

James Swann, president. P. Romare, vice president.
C. E. Currier, cashier.

The Atlanta national bank.

ATLANTA, GA., *Nov.* 7, 1891.

Huguley Mfg. Co., St. Louis, Mo.

95 DEAR SIR: I enclose statement of your account showing a balance of $2083.30 due you; also 13 cancelled vouchers, amounting to $3594.70.

Please examine carefully and report at once whether correct or not.

Respectfully, C. E. CURRIER, *Cashier.*

(1.)

ATLANTA, GA., *July* 8, 1890. No. —.

The Atlanta national bank

Pay to the order of 15 coupons Ala. & Ga. Mfg. Co. $300 three hundred dollars.

D. JANNOPOULO, *Treas.*
CURRIER.

Huguley Mfg. Co.

Collection dep't. Paid July 8, 1890. Atlanta national bank.

(2.)

ATLANTA, GA., *July* 11, 1890. No. —.

The Atlanta national bank

Pay to the order of 37 coupons Ala. & Ga. Mfg. Co. and int. $756.00 seven hundred and fifty-six dollars.

W. T. HUGULEY MFG. CO.,
Per C. E. CURRIER, *Cashier.*

Paid July 11, 1890. Atlanta national bank, Atlanta, Ga.

(3.)

ATLANTA, GA., *July* 11, 1890. No. —.

The Atlanta national bank

Pay to the order of 68 coupons Ala. & Ga. Mfg. Co. $1414.40 fourteen hundred and fourteen 40-100 dollars.

W. T. HUGULEY MFG. CO.
C. E. CURRIER, *Cashier.*

Cr. W. C. & L. Lanier.

Atlanta national bank, July 11. Paid. Receiving teller.

96 ST. LOUIS, MO., *Sept. 19th*, 1890.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: Your favor of the 16th inst. at hand and noted. In reply would say, inasmuch as I can not ascertain who holds the other 10 coupons due January 1, '90 of the late Ala. & Ga. Mfg. Co., we will leave enough money with you to pay them off as they turn up, and you will please return the balance to us here. As I do not know how you figured the interest on the 120 coupons you already paid, you will please keep enough to cover the interest due on the remaining 10 coupons, and when presented to you and paid please return them to me.

Balance to our credit	$522	60
Ten coupons to be paid at $20	200	00
	322	60
Interest on $200.00 from Jan. 1 to July 1—6 months		
Balance		

Which please remit to us.

Yours respectfully,

HUGULEY MFG. CO.
MARTIN S. TYRMENSTEIN,
Secretary.

Attachment to check No. 5.

(4.)

ATLANTA, GA., *July* 23, 1890. No. —.

The Atlanta national bank

Pay to the order of int. 10 coupons, 6 months ($7.00) seven dollars.

W. T. HUGULEY MFG. CO.
C. E. CURRIER, *Cas.*

L. & G. banking & trust for A. T. Dallis.

Collection dep't. Paid July 23, 1890. Atlanta national bank.

97 (5.)

ATLANTA, GA., *Sept.* 22, 1890. No. —.

The Atlanta national bank

Pay to the order of N. G. exchange ($315.60) three hundred and fifteen 60-100 dollars.

HUGULEY MFG. CO.
CURRIER, *Cas.*

Collection dep't. Paid Sept. 22, 1890. Atlanta national bank.

(6.)

ATLANTA, GA., *Dec.* 24, 1890. No. —.

The Atlanta national bank

Pay to order of 6 Ala. & Ga. coupons, Lanier ($120) one hundred and twenty dollars.

HUGULEY MFG. CO.
CURRIER, *Cas.*

Atlanta national bank. Dec. 26, 1890. Paid. Receiving teller.

Received of the Atlanta national bank thirty coupons $20.00 each of the Alabama & Georgia Mfg. Co., due January and July 1890, said coupons having been paid by the Atlanta national bank for account of the Huguley Mfg. Co., of St. Louis, Mo., four of the coupons were due January 1st, 1890, the remainder July, 1890.

D. JANNOPOULO, *Pres't.*

(7.)

ATLANTA, GA., *Jan'y* 5, 1891. No. —.

The Atlanta national bank

Pay to W. C. & L. Lanier $4.20 four 20-100 dollars.
7 per cent. interest on 6 mos. coupons Ala. & Ga. Mfg. Co., due Jan., 1890.

Chg. ac. HUGULEY MF. CO.
C. M.

Atlanta national bank. Paid Jan'y 5, 1891. Receiving teller.

98 (8.)

ATLANTA, GA., *Jan'y* 8, 1891. No. —.

The Atlanta national bank

Pay to the order of Ala. & Ga. Mfg. Co. coupons $289.80 two hundred and eighty-nine and 80-100 dollars.

Chg. HUGULEY MFG. CO.

Atlanta national bank, Jan'y 8, 1891. Paid. Receiving teller.

(9.)

ATLANTA, GA., *Jan'y* 14, 1891. No. —.

Atlanta national bank

Pay to the order of 8 coupons, due July, 1890, 20.00, $165.00, 6 mos. interest on same 560 dollars.

Chg. ac. HUGULEY MFG. CO.

Atlanta national bank. Paid Jan'y 14, 1891. Receiving teller.

(10.)

ATLANTA, GA., *Jan'y* 22, 1891. No. —.

The Atlanta national bank

Pay to order of 4 Jan'y, 1890, coupons $80, eighty dollars.

HUGULEY MFG. CO.
CURRIER.

Collecting dep't. Paid Jan'y 23, 1891. Atlanta national bank.

(11.)

ATLANTA, GA., *Jan'y* 23, 1891. No. —.

The Atlanta national bank

Pay to the order of 4 July, 1890, coupons Ala. & Ga. $—, eighty dollars.

HUGULEY MFG. CO.
CURRIER.

Collecting dep't. Paid Jan'y 23, 1891. Atlanta national bank.

99 (12.)

ATLANTA, GA., *Feb'y* 2, 1891. No. —.

The Atlanta national bank

Pay to the order of 3 July coupons Ala. & Ga., $60.

W. H. HUGULEY MFG. CO.
CURRIER.

Paid Feb'y 2, 1891. Atlanta national bank, Atlanta, Ga.
Paid 2.10 and charged taken after that date.

(13.)

ATLANTA, GA., 2-16, 1891. No. —.

The Atlanta national bank

Pay to the order of int. on coupons Feb'y 2, $2.10.

Charge W. H. HUGULEY MFG. CO.

Paid Feb'y 16, 1891. Atlanta national bank, Atlanta, Ga.

Huguley Mfg. Co., St. Louis, Mo., in account with the Atlanta national bank.

Date.		Dr.	Cr.
1890.			
June 30.	Dept.....	.....	$3,000 00
1891.			
Jan. 2.	"	.....	2,678 00

	Checks.	
	$300 00	
	4 20	
	1,414 40	
	756 00	
	7 00	
	315 60	
	120 00	
	2 10	
	60 00	
	289 80	
	80 00	
	80 00	
	165 60	
Balance	2,083 30	
	$5,678 00	$5,678 00
Nov. 7. Balance		$2,083 30

100 ATLANTA, GA., *Jan'y* 26, 1891.

The Atlanta national bank.

This is to certify that $2678.00 was received by us Jan'y 2, 1891, and placed to credit of the Huguley Mfg. Co., with instructions to pay the July, 1890, coupons and interest of the Ala. & Ga. Mfg. Co., when presented. We also on the same date notified Messrs. W. C. & L. Lanier to pay all coupons presented to them and charge to our acc't.

C. E. CURRIER, *Cashier.*

ST. LOUIS, MO., *Aug. 19th*, 1890.

Paul Romare, vice pres't Atlanta national bank, Atlanta, Ga.

DEAR SIR: On June 27th we sent you a New York exchange for $3000.00 to pay coupons on first mortgage bonds Ala. & Ga. Mfg. Co. due Jan. 1, 1890, and we suppose they have all been presented by this time.

Please return all paid coupons to us here, and send us New York exchange for the balance due us. Obliging yours truly,

HUGULEY MFG. CO.
M. S. TERMENSTEIN, *Secretary.*

ST. LOUIS, MO., *Aug. 30th*, 1890.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: On July 10 and Aug. 19th we wrote you asking whether you had paid all the coupons for which we send you June 17th New York exchange for $3000 which more than covered the amount necessary.

At this writing we are without an answer to either of the above letters.

Please let us know by return of mail how much you have paid on this, and if all, send us balance here, as requested before.

Yours very respectfully,

HUGULEY MANUFACTURING CO.
MARTIN S. TERMENSTEIN, *Sec't'y.*

ST. LOUIS, Mo., *Sept. 2nd*, 1890.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: Your N-M of yesterday at hand and noted.
101 I called on the Adams Express Co. here, and found the package of coupons sent by you on the 22nd, but owing to you spelling my name wrong they could not locate me, however, all is well now.

Thanks for your attention.

Yours respectfully,

HUGULEY MFG. CO.
MARTIN S. TERMENSTEIN, *Sec'y.*

ST. LOUIS, Mo., *Sept. 12th*, 1890.

W. T. Hugulley, Esq., West Point, Ga.

DEAR SIR: The Atlanta national bank has sent me 120 paid coupons of the Ala. & Ga. Co. bonds amounting to... $2,400.00
Interest on same..... 77.40

They paid 120 coupons and as I figure there are 10 more to be paid. Perhaps you can tell me who holds them and notify the parties to present them at Atlanta national bank for payment, so I can withdraw my balance with the bank.

They paid 68 coupons to unknown—
20 " " W. D. Denson—
17 " " W. T. Huguley—
15 " " La Grange Ba'k'g & Trust Co.

The bank holds $522.60 in our favor and I would like to have this matter closed. Please notify holders if possible and oblige,

Yours faithfully, MARTIN S. TIRMSTEIN, *Sec'y.*

ST. LOUIS, Mo., *Dec.* 29, '90.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: Enclosed we hand you New York exchange No. 254,377 for $2,678, two thousand six hundred and seventy-eight dollars which place to the cr. of the Huguley Mfg. Co., and pay coupons due July 1st, '90, of the first mortgage bonds of the Ala. & Ga. Mfg. Co. amounting to $2,600 together with the interest on same $78 total $2,678 and return coupons as paid to us. We have inserted notice in the *Constitution* of your city that the coupons are payable

at your bank on presentation. Please honor and acknowledge receipt hereof.

Yours respectfully,

HUGULEY MFG. CO.
MARTIN S. TIRMENSTEIN, *Sec'y.*

102 UNITED STATES OF AMERICA, }
Northern District of Georgia. }

In the Circuit Court of the United States for the Northern District of Georgia.

To Isaac Hardeman, C. A. Turner:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, *vs.* Alabama & Georgia Manufacturing Company *et al.*

And whereas, Logan Owens is a material witness in said suit on behalf of the defendant and can not attend said circuit court in person without manifest inconvenience:

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said Logan Owens personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of December, 1891.

[SEAL.] O. C. FULLER, *Clerk.*

Bill for foreclosure.

In Circuit Court of U. S. for Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by Logan Owens, a witness material for said defendant and who resides out of said district, to wit, in Macon, Ga.

1. Do you know the parties?

2. At what business are you now engaged? If you have
103 any connection with milling and especially cotton mills state when and where and in what capacities and how familiar you are with the operation, value, etc.?

3. What connection have you had with the Ala. & Ga. Mfg. Co., below West Point, Ga., and when and in what capacities? What if any improvements have been put upon said property or to or on the machinery since the 8th of January, 1890, and by whom?

4. What is the condition of said property now or when you last saw it (giving that date) as compared with its condition on the 8th of January, 1890? If worse how much worse, if better how much better measured in dollars?

5. Relate anything else beneficial to defendant on those subjects.

N. J. & T. A. HAMMOND,
Def'ts' Attorney-.

Service acknowledged and copy waived. Let a commission issue without order of court.

Dec. 24, 1891.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sol's for Pl'ff.

Filing.—Filed in clerk's office 28 day of Dec., 1891.

O. C. FULLER, *Clerk.*

Cross Interrogatories.

First. State particularly what improvements have been added to the machinery of the mill since it was sold by Fisher, receiver, or since the Huguley Mfg. Co. has been running it? If any new machinery has been added describe it particularly, and the value of each piece of such new machinery? If any repairs or additions have been added to the old machinery describe such and the value of such repairs—state each item separately.

Second. State how and in what manner the property of the said factory company has been taken care of since it passed out of the hands of the Ala. & Ga. Mfg. Co.? Answer both as to realty and personalty? State fully.

Third. If you, as superintendent of said company (that is Huguley Mfg. Co.) ever called the attention of the officers of the com-
104 pany to any needs of the mill in the way of additions to the machinery and findings for same state when and how often, and whether or not you made requisition for the same, and whether such requisition was filed? State fully.

Fourth. State all that you know that shows that said property in the hands of said Huguley Mfg. Co. — not been properly kept in repairs since it has had it in possession? Have you done so, and — not as valuable as it was when it passed into the possession of said Huguley Mfg. Co.? State all you know that will benefit the plaintiff.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
N. D. DENSON, *Solicitors for Plaintiff.*

Bill for foreclosure.

In Circuit Court of U. S. for Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

STATE OF GEORGIA,
County of Bibb.

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, to us directed, we have caused LOGAN OWENS, the witness in said commission named, to come before us, and being duly sworn, true answers to make to the interrogatories to said commission annexed, deposes and answers as follows:

To the first interrogatory he answers:

I do not know the plaintiff J. J. Robinson. I know the Alabama & Georgia Manufacturing Company.

To the second interrogatory he answers.

I am at this time superintendent of the Bibb Manufacturing Company. I was with the Alabama & Georgia mills for about ten years. I was foreman in the carding department in the mills located below West Point, Georgia, on the Alabama side. I also worked for the West Point mills about four years, as foreman in the carding and spinning department. I have also been superintendent of the Huguley Manufacturing Company about one year. All of
105 the above cotton mills. I have made cotton mill business my work for thirty years and am familiar with the workings of all machinery commonly connected with cotton mills and am also familiar with the value of the same.

To the third interrogatory he answers:

I worked as foreman in the carding department of these mills as near as I can remember from 1871 until 1880. I was superintendent of the same mills from July, 1890, to September, 1891.

There were improvements put upon the premises, upon the factory building and upon the machinery. The old operative houses were repaired, new houses built, the roof of the factory building repaired, parts of new machinery bought, the factory floor underpinned, new floor put in cloth room and new water house put in. Mr. Higginbotham looked after all outside repairs, putting in water house, underpinning floors, repairs on roofs. I put in the repairs on machinery and did all work relating to it. All the above was done since January 8th 1890.

To the fourth interrogatory he answers:

The condition of this property when I last saw it, which was in the latter part of August 1891, as compared with its condition on

the 8th of January, 1890, was much better, in my opinion at least seventy-five per cent. possibly one hundred per cent. better. The repairs and improvements put in by Higginbotham and myself would amount to about fifteen thousand dollars.

To the fifth interrogatory he answers:

I know nothing further to relate.

To the first X interrogatory he answers:

The following improvements have been added since the sale of Fisher receiver, and the price of the same.

One hundred spinning rollers from Morten, Reed & Co., of Baltimore, twenty dollars; one hundred spooler spindles from Riley Gray, Boston, fifty dollars; one hundred collars for same $22.00 five pounds glass steps for spinning $16.25; thirteen twist gear $12.60; 65 pounds castings for speeder $3.90; twelve yarn beams $96.00 two sets card clothing $343.20, one hundred and ten flyers for speeders $162.80, eighteen 7 inch flyers $20.70, twenty-six spinning rings
106 $6.50, one bill assorted repair work bought of West Point iron works $126.05, one bill from R. D. Cole Mfg. Co., Newnan, Geo., $100.00, twenty-four flyers, $27.60, twelve flyers $22.20. New pieces for cards and speeders $243.40, eighteen rollers for drawing $24.30, four gear $13.00, eighteen picker shafts $22.50, twelve picker shafts $15.00, five hundred and twenty-three stirrups $13.07, twelve crown wheels $39.00, forty-two pounds casting $4.20, thirty-two finished gear wheels $60.00, four spinning cylinders $194.00, sixteen sets card clothing $1699.02, one copper cylinder $17.00, one bill assorted castings and gear from Bridesberg $143.80.

The old operative houses and fences repaired and two new ones built $1,000.00. Repairing roof on mill $150.00. Underpinning factory and new waterhouse $1,000.00. Cloth room floor $250.00. Repairing dam $100.00.

To the second X interrogatory he answers:

The property was taken good care of during my time there since the sale by the receiver. All repairs were made to buildings and fences that were necessary. Some findings to machinery were not added because they were not supplied, otherwise the machinery was left in good condition. Guards were placed for the purpose of protecting the mill property from fire, trespassers, &c. I speak only of the time I was there. The fire pumps were all kept in good order.

To the third X interrogatory he answers:

I have called the Huguley Mfg. Co.'s attention for supplies needed, probably two or three times: they were not furnished. I made requisition for the same but it was not filled. I made the demand for the supplies on Mr. B. F. Gamble of Baltimore, and Mr. D. J. Jannopoulo, of St. Louis, Mo. These are the only persons connected with the Huguley Mfg. Co., that I made demand upon or requisition for supplies and which was always in writing or by letter.

To the fourth X interrogatory he answers:

The property has been taken proper care of since it went into the

hands of Huguley Mfg. Co. during the time I was there, and
107 the same kept in proper repair and its value greatly added to as stated in my answer to direct interrogatories. I know nothing more to benefit plaintiff.

LOGAN OWENS.

Answered, sworn to and subscribed before us this 4th day of January, 1892.

[L. S.] ISAAC HARDEMAN,
Commissioner.

[L. S.] C. A. TURNER,
Commissioner.

In the Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

To Horton Pope, W. Palmer Clarkson:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company and others.

And whereas, Demetrius Jannopoulo and John C. Orrick are material witnesses in said suit on behalf of the defendants and can not attend said circuit court in person without manifest inconvenience.

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said Demetrius Jannopoulo and John C. Orrick personally to come before you, and after being duly sworn, to examine them concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., on or before the first Monday in November, 1891.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of October, 1891.

[SEAL.] O. C. FULLER, *Clerk.*

108 Bill to foreclose mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by Demetrius Jannopoulo and John C. Orrick, witnesses material for said defendants, who reside out of said State, to wit, at St. Louis, Missouri.

1. Do you know the parties?

2. What connection have each of you had with the Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co.? What interest had either of you in the purchase of the property at the sale of Fisher receiver, and what interest have each of you held therein since?

3. If interest on the coupons of the Alabama & Georgia Manufacturing Co. has been paid by either of you, state when, where, and upon what kind of notice, and when such interest was due and payable?

4. What connection had D. Jannopoulo with the Atlanta national bank as customer or otherwise, before and since said purchase?

5. If any offer was made by anyone to pay any other interest on the bonds of the Alabama & Georgia Manufacturing Co., which was not accepted, state by whom such offer was made, in what form, and all the facts and circumstances connected therewith, to show whether there was or was not a — offer to have the same paid according to the contract. If any money was deposited, say by whom, how much, when, and where, and what became of said money.

6. If any letters were written to any persons conneeted with the matter of such payment or offer to pay, state to whom they were written, by whom, and when, and where, and when mailed, and how long at that time in the regular course of mail it took for such letters to be delivered and if you can measure by any other letters do that also.

7. If there was a refusal to accept interest, state who refused, so far as you can, and if either of such persons had any conver-
109 sation with you or either of you touching their refusal, state who they were, when the conversation occurred, and what was said by each.

8. If either of you had any conversation or did anything with an officer of the Atlanta national bank concerning such payment of interest state when and where and what was said and done at the time.

9. If since January, 1891, any offer was made to pay any interest on said bonds, state what offer, and by whom, and what was its

success, so far as you are advised. Relate anything else you know to benefit the defendants.

N. J. & T. A. HAMMOND,
JOHN C. ORRICK,
Att'ys for said Corporation Def'ts.

OCT. 10, 1891.

Messrs. N. J. & T. A. Hammond, city.

DEAR SIRS: If your client will admit that W. T. Huguley has such interest and had at the time of the filing of this bill in the property covered by the mtg. and sought to be foreclosed in case of Robinson, trustee, *vs.* Ala. & Ga. Mfg. Co. *et al.* as that said Huguley is properly made a defendant to said bill, then D. Jannopoulo and Jno. C. Orrick are hereby relieved from answering any cross intgs., and producing papers to establish the fact that said Huguley had such interest.

A failure to answer the cross intgs. shall be held to be a waiver on part of d'f'ts to *insert* on the defence that said Huguley was improperly joined as a defendant, and that the pl'ff shall be relieved from bringing forward any evidence to establish the fact of said Huguley's interest.

This proposition to remain open for 10 days, in the meantime you are — let us know in writing whether you accept or not.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH, *Solicitors for Plaintiff.*

The terms of the above proposition are hereby accepted.

N. J. & T. A. HAMMOD,
JNO. C. ORRICK,
Att'ys for Huguley Mfg. Co.

110 *Cross Intgs. for Jno. C. Orrick.*

1. Were you not present at the sale of the property of the Ala. & Ga. Mfg. Co., at Hamilton, Ga., on the first Tuesday in Jan'y, 1890, by H. C. Fisher, receiver? Did you not bid off the property in connection with Col. Chilton and Malcom Graham? Did you not bid off the property for D. Jannopoulo, J. F. Plummer & Co., the Western national bank and W. H. Huguley & Co., or W. T. Huguley? State particularly what they each had present remote or contingent.

2. What contract or contracts were made between the parties named prior to said sale or at the time of the sale or since that time in reference to the property sold. Was it not stipulated in the contract inquired about that W. H. Huguley & Co., or W. T. Huguley should be interested in the sale and purchase of the property?

3. What contract or contracts were made between said Huguley & Co. and D. Jannopoulo in the month of Dec., 1889, in reference to

the property above inquired about? Where is that contract or contracts now? In whose possession, custody or control are these contracts now?

Give the contents of such contracts, if you can not remember the exact language employed in each, give the substance of the same? Have you done so?

4. What other contract or contracts were entered into between said Huguley & Co., Jno. F. Plummer & Co., the Western National Bank of N. Y. and D. Jannopoulo or any other persons for them and on their behalf in reference to the title control or management of the property?

State the contents of all such contracts. If you can not state the exact language of each, state the substance of such contract or contracts.

If you have such contract or contracts as are inquired about in this or any of the preceding intgs. attach same to your answer. If you have not the originals attach copies to your answer and say whether or not the same are true copies? Have you done so?

5. Who are the stockholders in the Huguley Mfg. Co.?

What interest in said company has W. H. Huguley & Co.,
111 or W. T. Huguley? And how is that interest represented or evidenced? State the interest each of them has present remote or contingent and what each had when this bill was *filed in* cause above stated.

6. For whom were you trustee in the bidding off the property mentioned in the foregoing intgs.?

For whom was Mr. Chilton acting in the transaction inquired about? Why was it not stated who the beneficiaries were? Why was he put down as trustee without more? For whom was Malcom Graham Esq. trustee or agent in the transaction?

Is it not true that a contract or agreement was entered into between said parties or some of them in writing, and that on the 9 Jan'y, 1890, a confirmation or ratification of the same was entered into in words as follows: to wit:

GEORGIA, }
Fulton County. }

For and in consideration of the sum of one dollar I do ratify and confirm the foregoing instrument subject to existing contract between us and D. Jannopoulo, dated 18 Dec., 1889, and between us and Jno. F. Plummer & Co., dated Dec. 16, 1889. This 9 Jan'y, 1890.

(Signed) W. H. HUGULEY.

In presence of

T. H. WHITAKER.
W. M. SCOTT, *N. P.*

Where are the contracts of Dec. 16, '89, and Dec. 18, '89, above inquired about?

Have you these contracts or either of them? If you have not the original have you copy or copies? If so please attach to your answer?

If you have not the originals or copies—please state the contents? Have you done so?

7. If you say that Huguley & Co., nor W. T. Huguley had no interest in the property purchased why was it necessary to have them sign said confirmation or ratification above copied?

State the reason fully?

8. State fully what interest said W. T. Huguley had in the property sold at that time and what interest he was to thereafter acquire and in what manner or way he was to acquire it.

112 9. State any and all facts within your knowledge going to show that said Huguley or Huguley & Co., then had or was to have in said property sold—and what was the character of the interest. If it was contingent what was the contingency which was to occur before the interest vested. State fully. Have you done so?

10. State all you know that will benefit the plaintiff as fully as if interrogated thereto.

11. The foregoing questions as to the interest of said W. T. Huguley have relation to the time the bill was filed in this case as well as to the other time inquired about. Answer all of said questions fully as to his interest at the time this bill was filed.

Have you done so?

12. Did W. T. Huguley or W. H. Huguley & Co., have any sort of interest in said property at the time said bill was filed and was it understood that such was to be held in his or their own name or in the name of some one for them or him.

Have you stated all you know as to the interest of said Huguley or Huguley & Co., in said property at the time inquired about?

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH, *Sol's for Pl'ff.*

Cross Interrogatories for Demetrious Jannopoulo.

1st cross interrogatory:

The interest you hold in the property formerly belonging to the Alabama & Georgia Manufacturing Company is in writing is it not? When this property was sold by the receiver, H. C. Fisher, who became purchaser or purchasers? Was this purchase made under and by virtue of a written contract to which you were a party? Who was the bidder and bid the price at which this property was sold? For whom did such purchasers make the bid. Who did such person represent? Have you the contract under which this purchase was made, if so attach it to your answer? If you hav-n't the con-

tract where is it; in whose possession, custody and control?
113 Please state the terms of that contract. Who besides yourself was interested in the purchase of that property? Give the name of each person and corporation who were interested in the property that was purchased at that sale, or who become interested, and the interest of each under same.

2nd cross interrogatory:

What had Jno. C. Orrick to do with the purchase of this property at the sale on the first Tuesday in January, 1890? Was he not representative and trustee of yourself and Plummer and Company of New York? Who did Malcoum Graham represent in that contract? Is it not true that he represented the Western National Bank of New York? And does not the contract so state? Who did Col. Chilton, an attorney, represent in that purchase? In the contract it is stated, is it not, that he is a trustee? For whom is he trustee; and why was the *cestui que trust* left out as to him? Why was it provided that N. J. Hammond should name his successor in case he should die? What interest had Hammond in it; why should he name the successor to Chilton? For who- was he acting; that is whom was he representing in naming such successor? What interest did W. H. Huguley or W. H. Huguley & Co., have under and by virtue of the contract under which this property was purchased? Is it not true that Chilton represented W. H. Huguley & Co., and was trustee for them in that contract? If you say you have not got the original contract to which reference has been made, have you got a copy of it? If you have attach such copy to your answers, or a copy of it. State whether you have done so or not.

3rd cross interrogatory:

If you say W. H. Huguley & Co. had no interest in this purchase then why was this confirmation and ratification made by W. H. Huguley & Co., in the following words:

"STATE OF GEORGIA, }
"*Fulton County.*" }

"For and in consideration of the sum of one dollar I do ratify and confirm the foregoing instrument subject to the existing contract between us and D. Jannopoulo dated 18th day of December, 1889, between us, Jno. F. Plummer and Company dated De-
114 cember 16th, 1889. This 9th day of January, 1890.

(Signed) W. H. HUGULEY."

In presence of—
T. H. WHITTAKER.
W. M. SCOTT, *N. P.*

4th cross interrogatory:

Have you the contract made between yourself and W. H. Huguley & Co.?

If you have the original attach it to your answers to the interroga-

tories. If you haven't got the original have you got a copy? If you have attach copy to these interrogatories. Have you done so? If you have not state why not. In asking for a copy of this contract I mean the contract mentioned in the above ratification. If you haven't a copy of the original nor a copy, please state where the original is; in whose possession, custody or control is it? What was the contents of said contract; state fully.

5th cross interrogatory:

Have you got the original contract between Huguley & Co. and John F. Plummer and Company? If you have not got the original have you a copy? That is the contract mentioned in this ratification dated 16th day of December, 1889. If you have the original attach it to your answers to these interrogatories. If you haven't the original, but a copy, attach the copy. If you have neither then where is the original in whose possession, custody or control? What were the terms of said contract, give them in full?

6th interrogatory:

What interest has W. H. Huguley and Co. in the property purchased at said receiver's sale, and now held by the W. H. Huguley Manufacturing Company, now or heretofore? Is it not true that W. H. Huguley and Company have the right to own, control and manage said property on the repayment of money expended by yourself and other parties? If he has not got that right now, did he not have it under the contracts heretofore mentioned? If he has not got it now, when did he cease to have that right?

115 7th interrogatory:

If there are any other contracts existing between you and W. H. Huguley or between the W. H. Huguley Manufacturing Company and W. H. Huguley and Company, or between anybody in reference to this property under and by which W. H. Huguley and Company have had, or now have, or will have any interest therein please attach it to your answers to these interrogatories? Have you done so? If not why have you not? If any such contracts exist and you have not got the original and have copies, attach copies? If you haven't copies then state the contents of such contracts?

8th interrogatory:

Were not all the contracts made in duplicate and W. H. Huguley and Company or W. T. Huguley received one of the copies or duplicates? Have you received any letters from W. H. Huguley and Company, or W. T. Huguley in reference to these contracts, or in reference to an interest which they have or claim in connection with this property or any one else for them? If you have where — they? Attach same to your answers to these interrogatories? What is the name of the present corporation operating this property? Who are the stockholders in this corporation; and the amount of stock owned by each, and when each acquired his stock and how? What is the amount of the capital stock? Has it ever been issued; and is it now held as security or hypothecated; who holds it and

for what? Who are the officers and directors of the W. H. Huguley Manufacturing Company, or this new corporation, and who has been during the time and since it was first organized?

9th interrogatory:

If you say you ever paid any interest coupons of the Alabama and Georgia Manufacturing Company's bonds since the property was sold by the receiver, were the coupons marked paid and cancelled, or do you now hold them as bearer. Some of these were paid in Atlanta by the Atlanta national bank, or through the Atlanta national bank, and some at West Point were they not, through W. C. & L. Lanier? How do you know this? Have you ever paid any of them yourself and if any of them have been paid they were paid through other persons? Is it not true that you do not know
116 where they were paid, or when they were paid? Was there any money in the city of West Point at W. H. Huguley's & Company's office, or at the office of the Alabama and Georgia Manufacturing Company or at the bank of W. C. & L. Lanier or any other place in said city for the payment of those coupons falling due July 1st, 1890, or on the 31st, day of December, 1890, or on the first of January, 1891? Now, Mr. Jannopoulo is it not true, and don't you know it, that there was not one dollar at any place in the city of West Point in the month of December, 1890, and in the month of January, 1891, placed there by anybody for the payment of the coupons falling due in January, 1891?

10. State any and all facts you may know going to show that said Huguley & Co., or W. T. Huguley had any interest at the time of the filing of this bill in said property covered by plaintiff's mortgage, and what the interest was, whether present, remote or contingent and how the same was held, whether in their or his own name or names or in the name of some other person.

Have you in good faith and to the best of your knowledge and ability answered this last and the other cross intgs.?

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON, *Sols. for Pl'ff.*

Bill to foreclose mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

STATE OF MISSOURI,
City of St. Louis.

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, to us

directed, we have caused Demetrios Jannopoulo and John
117 C. Orrick, witnesses in said commission named, to come before us, and being duly sworn true answers to make to the interrogatories to said commission annexed, depose and answer as follows: D. JANNOPOULO. In answer to the first interrogatory, he states:

I know the parties.

In answer to the second interrogatory he states:

I never had any connection with the Alabama & Georgia Manufacturing Co. I am the president of the Huguley Manufacturing Co., have been such for more than a year. I had no interest in the purchase of the property at the sale of Fisher, receiver. I advanced some money, however, to aid in the purchase of the property at this sale. Since the sale by Fisher, and the incorporation of the Huguley Manufacturing Company. I have been interested as a stockholder in the Huguley Manufacturing Co., and am now and have been for more than a year last past president of the company.

In answer to the third interrogatory he states:

On the 27th day of June, 1890, I addressed a letter to Paul Romare, vice president of the Atlanta national bank, Georgia, in regard to the payment of overdue coupons, on first mortgage bonds of the Atlanta & Georgia Manufacturing Co., due January 1st, 1890, and in that letter I enclosed New York exchange No. 74142, for three thousand dollars, to be placed by said bank to the credit of the Huguley Manufacturing Co., with instructions to the bank to pay on presentation said over due coupons, and requested the bank to insert a notice in the Atlanta Constitution that those coupons would be paid at their bank on presentation. The original of this letter is not in my possession and should be in the possession of the Atlanta national bank. I herewith file copy of said letter marked "Exhibit A."

Pursuant to my request, a notice was duly published in the Atlanta Constitution, notifying all holders of bonds or coupons that the latter would be paid at the Atlanta national bank on presentation. I was advised at that time that the Alabama & Georgia Manufacturing Co. had ceased to do business, having been sold out by receiver, and had no office in West Point, and I ascertained that pending the receivership the coupons on those bonds of the Alabama & Georgia Manufacturing Co. had been paid to the bondholders at the
Atlanta national bank at Atlanta, and that all the holders
118 acquiesced in the selection of the Atlanta national bank as a place at which they were willing to receive the money. Under these circumstances I was advised by my counsel, Mr. John C. Orrick, to continue the Atlanta national bank as the place at which the coupons should be paid. At the same time the Huguley Manufacturing Co. made the Atlanta national bank its banker, and sent to them the signatures of the president and secretary, as appears by the letter of June 27th, 1890, the amount deposited being several hundred dollars in excess of the amount due on the coupons. On July 10th, 1890, I caused to be sent a letter to Paul Romary, vice presi-

dent Atlanta national bank, requesting him to report the amount of coupons of the Alabama & Georgia Manufacturing Co. bonds that had been paid. The original of this letter is not in my possession or control, but I herewith attach a copy of the same, marked "Exhibit B."

In reply to this letter I received a letter from C. E. Currier, cashier, dated July 14th, 1890, addressed to me, which I herewith file as an exhibit, marked "Exhibit C."

On August 19th, 1890, our company, through Mr. Tirmenstein, secretary, addressed and sent a letter of that date to Paul Romary, vice president Atlanta national bank, requesting information as to payment of coupons due January 1st, 1890, and requesting return of the paid coupons to our office here. The original of this letter is not in our possession or control, and I herewith attach a copy of same as an exhibit hereto, marked "Exhibit D."

Receiving no reply from Mr. Romary to this letter, on August 30th, 1890, we addressed a letter to the Atlanta national bank, calling attention to our letters of July 10th and August 19th, for information, etc. This letter is not in our control or possession, and I attach herewith copy of same as an exhibit, marked "Exhibit E."

I herewith file also letter from Atlanta national bank dated September 16th, 1890, informing us of the number of coupons that were still outstanding. On September 19th, 1890, we addressed and sent a letter, the original of which is not in our possession and control, but a true copy thereof I herewith attach as an exhibit to my deposition, marked "Exhibit F."

On September 22, 1890, our secretary, Mr. Tirmenstein re-
119 ceived a letter from C. E. Currier, cashier Atlanta national bank, enclosing to us their New York check for 315.60, being balance to our credit, after retaining 207 dollars, sufficient to pay twenty coupons and interest for six months, which had not been presented; all the rest of the coupons covering the interest due January 1st, 1890, on all the bonds of the Alabama & Georgia Manufacturing Co. was paid by us at the Atlanta national bank, pursuant to the notice I have mentioned, published in the Atlanta Constitution. The coupons were presented there and were paid on our request at the said bank. I herewith file said letter of September 22nd, 1890, of C. E. Currier, cashier, as an exhibit to be attached to my deposition as in case of all the other letters. Which letter is marked Exhibit "G."

No one of the bondholders at any time made any complaint to us or objected to the acceptance of payment of these coupons at the Atlanta national bank, and we have never been advised by the Atlanta national bank that there was any objection to the place we had designated for payment. So subsequently, when we were providing for the payment of the coupons to be paid January 1st, 1891, on these bonds, we repeated substantially what we had done before, by sending the money to the Atlanta national bank, and causing notice to be inserted in the Atlanta Constitution advising all coupon

holders that their coupons would be paid upon presentation at said bank. I have not in my possession the original of this notice in the Atlanta Constitution, but they were inserted and published in said paper. In making such provision for payment of said coupons, on the 29th day of December, 1890, I directed our secretary Martin S. Ternenstein to forward to said Atlanta national bank on that date $2,678.00 represented by New York exchange No. 254,377, to be placed by it to the credit of the Huguley Manufacturing Company, with direction- to pay all coupons on bonds of Alabama & Georgia Manufacturing Company, due July 1st, 1890, together with interest thereon, and return the coupons as paid, advising it that notice to this effect would be inserted in the Atlanta Constitution. The original of this letter is not in our possession or control but I herewith present and file as an exhibit, copy of same marked "Exhibit H." This letter enclosing said draft was mailed here in St. Louis to said bank on the afternoon of December 29th, 1890. The mail train on which this letter would in due course have gone, left St. Louis for Atlanta in the evening about 7 or 8 o'clock. It was mailed in ample time to have gone on that train. These trains consume according to their regular time about twenty-four hours between St. Louis and Atlanta. This letter in the ordinary course of mail should have arrived at Atlanta on the evening of December 30th and have been delivered at said bank on the morning of December 31st; this I know from other letters which I have sent on the same date, by the same mail to J. W. Higginbotham, West Point, Ga., in which said Higginbotham was notified of the forwarding of the semi-monthly payroll at our mill. I know from other letters received from Atlanta, that the time consumed between St. Louis and Atlanta, or Atlanta and St. Louis, for the transmission of a letter is about twenty-four hours. I hold in my hand a letter to us from Corbett & McCandless, sent from Atlanta, Ga., October 26th, 1891, which was mailed at Atlanta, as shown by the post office stamp, at 4.30 p. m., on October 26th, and as shown by the stamp of the post office here, was received here October 27th 10 p. m. This letter was received by us on the morning of the 28th of October. I herewith attach said letter, together with the envelope, marked Exhibit "I."

120

The notice which I ordered inserted, and which was inserted in the Atlanta Constitution of date December 29th, 1890, is as follows:

"Notice.—The coupons due July 1st, 1890, to the first mortgage bonds of the Alabama & Georgia Manufacturing Company, will be paid on presentation at the Atlanta national bank, Atlanta, Georgia, by said bank.

HUGULEY MANUFACTURING CO.
D. JANNOPOULO, *Pres't.*"

Not hearing from the Atlanta national bank with reference to this matter, on January 14th, 1891, I caused to be sent to said bank January 14th, the following telegram:

121 "Atlanta national bank, Atlanta, Ga.:

How many Alabama & Georgia Manufacturing Company coupons have been paid? Answer.

(Signed) HUGULEY MFG. CO.,
St. Louis, Mo."

I attach herewith copy of said telegram, the original not being in our possession or control.

On January 14th, 1891, same date, we received from the Atlanta national bank a telegram as follows:

"Huguley Manufacturing Company, St. Louis:

Twenty-two coupons paid.

ATLANTA NATIONAL BANK."

I herewith attach and file the original of said telegram; said copy and original are marked Ex. "J" and "K" respectively. The par value of these bonds was five hundred dollars, and each of the coupons of the par value of twenty dollars.

On January 22nd, 1891, I sent the following telegram to Paul Romary, vice president of the Atlanta national bank, Atlanta, Ga.

"How many coupons have been paid out of the last deposit? Wire answer.

D. JANNOPOULO, *Pres't*,"

a copy of which telegram, the original not being in our control, is hereby filed as "Exhibit L." On the same day, January 22, 1891, I received the following telegram.

"D. Jannopoulo, pres't, St. Louis:

Twenty-six coupons paid.

C. E. CURRIER, *Cashier*."

I now file this original telegram, marked "Exhibit M."

In answer to interrogatory fourth he states:

I individually had money deposited with the Atlanta national bank, before and after the purchase at the receiver's sale and in that sense was a customer of the bank, and subsequently, as above stated, the Huguley Manufacturing Co., was a depositor and customer of the bank.

In answer to interrogatory fifth he states:

I have already detailed the facts and circumstances connected with the effort of our company to pay the coupons through the Atlanta national bank in answer to interrogatory third. We
122 acted in good faith to have the coupons paid, according to the contract, and the money for these parties was deposited by us with said bank in the amount, and at the date above stated. All the money deposited by us in the Atlanta national bank to pay coupons due January 1st, 1890, was used in paying said coupons,

except twenty which were not presented, and 207 dollars has since the 1st day of July, 1890, down to the present time remained at the Atlanta national bank to pay same on presentation.

In answer to interrogatory sixth, he states:

I have in answer to interrogatory fourth filed herewith all correspondence relative to the matter of payment or effort to pay said coupons. These letters were written to the parties and at the dates, and mailed, as detailed above and the time consumed in the regular course of mail for such letters to be delivered between St. Louis and Atlanta, was about 24 hours, as above stated and as shown by another letter before referred to of Corbett & McCandless, sent to us from Atlanta.

In answer to interrogatory seventh he states:

In the latter part of January, 1891, and subsequent to the 22nd day of that month, I went to Atlanta, Ga., and while there called at the Atlanta national bank, and saw Mr. Romary, the vice president, and Mr. Currier, the cashier. I called at the bank two or three times the same day, and on that occasion I made a visit there and saw Mr. Romary in his private office and there had a conversation with him in regard to the coupons. I had then ascertained through the correspondence and telegrams which are filed herewith as exhibits, that only twenty-six coupons had been presented for payment, whereas those represented a small portion of the coupons which I expected would be presented. At that time the bill of foreclosure filed by J. J. Robinson *vs.* The Alabama & Georgia Manufacturing Company in the United States circuit court at Atlanta, Ga., to foreclose the mortgage had been filed, and on the occasion of my conversation with Mr. Romary, I asked him how many coupons had been presented and paid. He told me twenty-six. Then I asked him if he would be kind enough to deliver to me the twenty-six coupons that had been paid. Mr. Romary then
123 walked out of his office into the bank, and in a few minutes returned and handed me the twenty-six coupons contained in three envelopes, endorsed as appears thereon. One of these envelopes contained four coupons that were owned by the Atlanta national bank, the bank being the owner as I was informed of two thousand dollars worth of bonds. I here now produce said three packages of coupons so delivered to me by said Romary in the form as delivered to me by him. I now file them as exhibits and they are marked respectively N, O and P. Said papers were sent to me by N. J. Hammond, of Atlanta. I complained to Mr. Romary about the refusal of the other coupon holders to take their interest, as the money was there at his bank for them, and he replied that it was no fault of theirs, that they had done all they could, and he hoped that I did not blame the bank. On examining the envelopes I noticed one marked "four coupons payable Atlanta national bank, credit interest account." I thereupon asked Mr. Romary if those were the coupons and the bonds that the bank held, and he said they were. I was particular about making this inquiry, as it had been intimated to me through other sources that the Atlanta national

bank was either instigating or had employed counsel to foreclose the mortgage. I was informed that Messrs. Abbott & Smith, who were the counsel in the foreclosure proceeding, were the attorneys of the Atlanta national bank in this matter, hence my solicitude in being satisfied that the bank had collected its coupons. He expressed sympathy for our company, but stated that the bank had done its duty, and that they accepted money for their own coupons, and had done its best as our representative in this matter.

In answer to interrogatory eight he states:—

I have detailed in my answer to interrogatory seventh the conversation with Mr. Paul Romare, vice president of the Atlanta national bank concerning the payment of the interest. I have detailed all I can now recollect of said conversation. This conversation occurred at the Atlanta national bank in Mr. Romary's private office in the latter part of January on the occasion of my visit to Atlanta at that time.

In answer to interrogatory nine, he states:—

Since January, 1891, our company made offers to pay the
124 interest on said bonds payable July 1st, 1891. The interest due January 1st, 1891, the company offered to pay, at the Atlanta national bank, through N. J. Hammond, and at other places as might be directed by said Hammond. We forwarded to Mr. Hammond sufficient money to pay all the unpaid coupons, and I am informed that we made the effort in due form, and the same was refused, but as to this, Mr. Hammond himself can give particular information. I now produce our letter of date Dec'r 29, 1890, to the Constitution Publishing Company of Atlanta in reference to notice as to payment of coupons with the original notice attached and also receipt of publishing Co., for publication of said notice. The pencil marks thereon were not made by us nor the words stamped thereon, entered January 1, 1891. I presume they were placed thereon by said publishing Co. The papers were sent to me by N. J. Hammond. I now attach them to my deposition as Exhibit Q. And further deponent saith not.

D. JANNOPOULO.

Answered, sworn to and subscribed before us this 31st day of October, 1891.

[L. S.] HORTON POPE, *Commissioner.*
[L. S.] W. PALMER CLARKSON, *Commissioner.*

Commissioner's fees $4, paid by D. Jannopoulo.

(Copy.)

ST. LOUIS, MO., *June 27th*, 1890.

Paul Romare, V. P. Atlanta national bank, Atlanta, Ga.

DEAR SIR: Herewith enclosed find New York exchange No. 74,142 for $3,000.00, which place to the credit of the Huguley Mfg.

Co., $2,691.00 of same is to pay over due coupons on first mortgage bonds of the Alabama & Georgia Mfg. Co. due January 1st, 1890.

Please insert notice in the Atlanta Constitution that these coupons will be paid at your bank on presentation. The amount due January 1st, 1890, was $2,600, interest thereon at 7 per cent. is $91.00, total $2,691.00. Please pay these coupons as presented. I am now in control of this company.

125 Kindly acknowledge receipt of this and state whether you will attend to the matter.

Yours very respectfully, D. JANNOPOULO,
Pres. & Treas. Huguley Mfg. Co.

Exhibit A to deposition of D. Jannopoulo.

ST. LOUIS, MO., *June 27th*, 1890.

Paul Romare, V. P.

P. S.—Enclosed find signature of treasurer who will sign all checks, and countersigned by the secretary.

D. JANNOPOULO, *Pres't.*

(Copy.)

ST. LOUIS, MO., *July 10th*, 1890.

Paul Romare, V. P. Atlanta national bank, Atlanta, Ga.

DEAR SIR: Please report to me if the coupons of the Ala. & Ga. Mfg. Co. have been paid, and also forward the checks that I drew on your bank last January, and oblige

Yours very truly, D. JANNOPOULO.

Exhibit B to deposition of D. Jannopoulo.

ATLANTA, GA., *July* 14, 1890.

D. Jannopoulo, Esq., St. Louis.

DEAR SIR: Replying to your letter of the 10th inst. We have paid 120 coupons of the Ala. & Ga. Mfg. Co., which is all that has been presented up to this date. The checks referred to in your letter merely memorandums, and did not go through our books. We can't find them and presume they were destroyed.

Yours truly, C. E. CURRIER, *Cashier.*

Exhibit C to deposition of D. Jannopoulo.

(Copy.)

ST. LOUIS, MO., *Aug. 19th*, 1890.

Paul Romare, vice pres't Atlanta national bank, Atlanta, Ga.

126 DEAR SIR: On June 27th we sent you a New York exchange for $3000.00, to pay coupons on first mortgage bonds,

Ala. & Ga. Mfg. Co., due January 1st, 1890, and we suppose they have all been presented by this time.

Please return all paid coupons to us here, and send us New York exchange for the balance due us, obliging

Yours truly,

(Signed) HUGULEY MFG. CO.
M. S. TIRMENSTEIN, *Secretary.*

Exhibit D, to deposition of D. Jannopoulo.

(Copy.)

ST. LOUIS, MO., *Aug. 30th*, 1890.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: On July 10th and Aug. 19th, we wrote you, asking whether you had paid all the coupons for which we sent you June 27th, New York exchange for $3000, which more than covered the amount necessary.

At this writing we are without an answer to either of the above letters.

Please let us know by return mail how much you have paid on this and if all, send us balance here, as requested before.

Yours very respectfully,

(Signed) HUGULEY MANUFACTURING CO.
MARTIN S. TIRMENSTEIN, *Sec'y.*

Exhibit E, to deposition of D. Jannopoulo.

(Copy.)

ST. LOUIS, MO., *Sept. 19th*, 1890.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: Your favor of the 16th inst. at hand and noted. In reply would say, in as much as I can not ascertain who holds the other 10 coupons due January 1st, 1890, of the late Ala. & Ga. Mfg. Co., we will have enough money with you to pay them off as they turn up, and you will please return the balance to us here. As I do not know how you figured the interest on the 120 coupons you already paid, you will please keep enough to cover the in-
127 terest due on the remaining 10 coupons, and when presented to you and paid, please return them to me.

Balance to our cr	$522.60
10 coupons to be paid at $20.00	200.00
	$322.60

Interest on $200 from January 1st, to July 1st, 6 months. Balance —, which please remit us.

Yours respectfully,

(Signed) HUGULEY MFG. CO.
MARTIN S. TIRMENSTEIN, *Sec'y.*

Exhibit F. to deposition of D. Jannopoulo.

ATLANTA, GA., *Sept.* 22*d*, 1890.

M. S. Termenstein, Esq., sec't'y, St. Louis.

DEAR SIR: As requested I enclose herewith our N. Y. check covering $315.60. We have retained $207.00 to pay 20 coupons and interest 6 mos.

Yours truly, C. E. CURRUER, *Cas.*

Exhibit G. to deposition of D. Jannopoulo.

ST. LOUIS, MO., *Dec.* 29*th*, 1890.

Atlanta national bank, Atlanta, Ga.

GENTLEMEN: Enclosed we hand you New York exchange No. 254,377, for $2,678.00, two thousand six hundred and seventy-eight dollars, which place to the credit of the Huguley Mfg. Co., and pay coupons due July 1st, 1890, of the first mortgage bonds of the Ala. & Ga. Mfg. Co., amounting to $2,600.00, together with interest on same $78.00 total $2,678.00—and return coupons as paid to us here. We have inserted notice in the *Constitution* of your city that these coupons are payable at your bank on presentation. Please honor and acknowledge receipt hereof.

Yours respectfully,

(Signed) HUGULEY MFG. CO.
MARTIN S. TIRMENSTEIN, *Sec'y.*

Exhibit H. to deposition of D. Jannopoulo.

Post marked Atlanta, Ga., Oct. 26, 4.30 p. m., 1891.

128 Post marked on back, Saint Louis, received 27, 10 p. m., 1891.

HUGULEY MNFG. CO,,
St. Louis,
Mo.

Exhibit I. to deposition of D. Jannopoulo.

ATLANTA, GA., *Oct.* 26, 1891.

(Dictated by Torbett.)

Huguley Mnfg. Co., St. Louis, Mo.

DEAR SIRS: Enclosed herewith we send you two drafts with receipts attached to each, which please sign at the cross marks on the

front, also at the cross marks on the back of draft, and return to us. As soon as we get all the collections together, will make the final and complete report. Hope this is satisfactory.

Yours very truly, TORBETT & McCANDLESS.

(*Copy of Telegram.*)

ST. LOUIS, Mo., *Jan. 14th*, 1891.

Atlanta national bank, Atlanta, Ga.:

How many Alabama & Georgia Manufacturing Company's coupons have been paid. Answer.

HUGULEY MFG. CO.,
St. Louis, Mo.

Paid.

Exhibit J. to deposition of D. Jannopoulo.

The Western Union Telegraph Company.

Received at 50 Jan. 14 1891.
Dated Atlanta Ga. 14.

To Huguley Mfg. Co., St. Louis:

Twenty two coupons paid.

ATLANTA NAT'L BANK.

Exhibit K. to depositions of D. Jannopoulo.

(*Copy of Telegram.*)

129 Paul Romare, vice pres't Atlanta national bank, Atlanta, Ga.:

How many coupons have been paid out of last deposit, wire answer.

D. JANNOPOULO, *Pres't.*

Paid.

Exhibit L. to deposition of D. Jannopoulo.

The Western Union Telegraph Company.

Received at 40 Jan'y 22, 1891.
Dated Atlanta, Ga. 22

To D. Jannopoulo, pres't, St. Louis:

Twenty-six July coupons paid.

C. E. CURRIER, *Cash.*

Exhibit M. to deposition of D. Jannopoulo.

Atlanta national bank.

4 coupons Ala. & Ga. Mfg. Co. $20—80.
Due July 1–90. Payable Atlanta national bank.

Credit int. ac.

Exhibit N. to deposition of D. Jannopoulo.

Atlanta national bank.

14 coupons Ala. & Ga. Mfg. Co.....	$280.00
July 1, 1890, 6 mos. int.....	9.80
	$289.80

Exhibit O to deposition of D. Jannopoulo.

Credit W. C. & L. Lanier, Jan. 8, 1891.

Atlanta national bank.

8 coupons Ala. & Ga. Mfg. Co. $20.....	160.00
Due July 1, 1890, 6 mos. int.....	5.60
Total..	165.60

Exhibit P to deposition of D. Jannopoulo.

Credit W. C. & L. Lanier.

ATLANTA, GA., *Jan.*, 1891.

Huguley Mfg. Co., city, to Constitution Publishing Co., Dr.

Jan. 2. To 8 lines local coupon N 3 ti..... $3.60

Paid by N. J. Hammond, Jan. 30th, 1891.

CONS. PUB'G CO.
A. L. FOWLER.

130 ST. LOUIS, MO., *Dec. 29th*, 1890.

Constitution Publishing Co., Atlanta, Ga.

GENTLEMEN: Enclosed we hand you notice, which please insert in your daily paper on receipt of this, 31st of December, January 1st and 2d, *i. e.*, three times and send us copy of same, with bill to this office, and we will remit you direct.

Yours very truly,

HUGULEY MFG. CO.
D. JANNOPOULO, *Pres't.*

Exhibit Q to deposition of D. Jannopoulo.

Entered Jan. 1, 1891.

ST. LOUIS, MO., *Dec. 29th*, 1890.

Notice.—All coupons due July first, 1890, to the first mortgage bonds of the Alabama & Georgia Manufacturing Company, will be paid on presentation at the Atlanta national bank, Atlanta, Georgia, by said bank.

HUGULEY MFG. CO.
D. JANNOPOULO, *Pres't.*

Entered Jan. 1, 1891.

JOHN C. ORRICK.

To the first interrogatory he answers:

I know the parties, except the Alabama & Georgia Manufacturing Company. I have heard of this corporation, but not until about the time of the sale of the property by Fisher, receiver.

To the second interrogatory he answers:

I have never had any connection with the Alabama & Georgia Manufacturing Company. I am connected with the Huguley Manufacturing Company. I am an officer and director thereof. I was interested in the purchase of the property at the sale made by Fisher, receiver at Hamilton, Ga. The property was knocked down on my bid at that sale, I acting as trustee with Malcolm Graham and J. M. Chilton, in whose names the property was conveyed by Fisher, receiver. At that time I had no personal interest in the property, but was acting as attorney, partly for D. Jannopoulo.
131 Subsequently the trustees conveyed the property to the Huguley Manufacturing Company, in which company both myself and Mr. Jannopoulo then became and are now stockholders.

To the third interrogatory he answers.

I have not personally paid any interest coupons of the Alabama & Georgia Manufacturing Company, but I know that the Huguley Manufacturing Company through Mr. D. Jannopoulo its president has either paid or offered to pay all the interest on the bonds of the Alabama & Georgia Manufacturing Co.

To the fourth interrogatory he answers:—

D. Jannopoulo transacted business with the Atlanta national bank either by depositing money therein before said purchase and since said purchase, by appointing it its agent to pay coupons on the bonds of said Alabama & Georgia Manufacturing Company that have become due and payable since said purchase.

To the fifth interrogatory he answers:—

The Atlanta National Bank of Atlanta, Ga., was furnished the sum of $— by the Huguley Manufacturing Company through D. Jannopoulo, its president to pay all interest coupons on all the bonds of said Alabama & Georgia Manufacturing Company, sixty-five thousand dollars in all, and I am informed that said Atlanta national bank offered to pay all of said interest coupons due and payable, January 1st, 1891, and that under said offer, only a portion of said coupons were presented to the bank and paid; the remainder

were not presented for payment although the money to pay the same was deposited in due time with said bank, and still remains there.

To the sixth interrogatory he answers:—

I wrote no letters in connection with the offer to pay, or the payment of interest. This was all done through Mr. Jannopoulo as president of the Huguley Manufacturing Co. According to the regular course of mails, it is twenty-four hours' time between St. Louis and Atlanta.

To the seventh interrogatory he answers—

I only know of the refusal to accept interest through hearsay. The matter as to payment of interest &c., was under the immediate charge of Mr. Jannopoulo as president of the company.

To the eighth interrogatory he answers:—

I had no conversation with any officer of the Atlanta national bank.

132 To the ninth interrogatory he answers:—

On my advice Mr. Jannopoulo, as president of the Huguley Manufacturing Company sent the money to cover the coupons that were payable July 1, 1891, to Mr. N. J. Hammond, as the attorney of the company, and to take such steps as in his judgment were necessary and proper to pay the coupons.

I will state that with reference generally to the selection of the Atlanta national bank as an agent to pay the coupons due on the bonds of the Alabama & Georgia Manufacturing Company, I, as counsel for the Huguley Manufacturing Company, advised it, and continued the Atlanta national bank as the place for such payment, understanding at the time that the Alabama & Georgia Manufacturing Company was practically defunct, and had no office at West Point, and when the bondholders in July, 1890, accepted their interest at the Atlanta national bank from the Huguley Manufacturing Company, I felt there could be no question as to the propriety of thereafter continuing to have the same paid there.

And further deponent saith not.

JOHN C. ORRICK.

Answered, sworn to and subscribed before us this the 31st day of October, 1891.

[L. S.] HORTON POPE, *Commissioner.*
[L. S.] W. PALMER CLARKSON,
Commissioner.

We consent that the copies of letters, telegrams and notices may be read without accounting for originals, subject to such objections as could be made to the originals as evidence.

This Jan'y 7, 1891.

ABBOTT & SMITH, *Sols., &c.*

We agree that these intgs. may be returned to the commissioners in order that the witness D. Jannopoulo may answer the 9th
133 cross intgs. without taking a formal order of the court al-

lowing the commission to be withdrawn for that purpose. Dec. 1, 1891.

And may correct any error as to date of letter.

DORSEY BREWSTER & HOWELL,
ABBOTT & SMITH,
Sols. for Pl'ff Robinson.
N. J. & T. A. HAMMOND,
Att'ys for Def'ts as per Record.

By virtue of the attached agreement of counsel of date December 1st, 1891, D. Jannopoulo, the witness named, personally appeared before us and in answer to the 9th cross interrogatory herein to him says as follows; the Huguley Manufacturing Company since the property of the Alabama & Georgia Manufacturing Company was sold by Fisher, receiver has paid the interest coupons on the bonds of the Alabama & Georgia Manufacturing Company and offered to pay all that were due—all the coupons have been cancelled as paid. We do not now nor never have held any coupons as bearer. I never paid any of these coupons myself, but I received most of the coupons after they were paid from the Atlanta national bank and cancelled them and filed them away as vouchers. I instructed the Atlanta national bank to pay the coupons not to buy them. I did not place any money for interest at West Point as the Atlanta national bank at Atlanta was our agent to pay the coupons—I caused the interest money to be placed there. The bondholders while Fisher was receiver I was informed accepted this bank as place of payment and in July 1890, after the Huguley Manufacturing Company took charge, the bondholders again accepted their interest at the Atlanta national bank and so in December, 1890, I sent the interest money to the Atlanta national bank as before under the advice of my attorney, John C. Orrick to pay the coupons due July 1st, 1890. No money was placed in the city of West Point or elsewhere in the month of December, 1890, or in the month of January, 1891, for the payment of coupons on their face falling due in January, 1891, but the money sent about that time was to pay coupons which on their face became due July 1st, 1890. I sent to N. J. Hammond in Atlanta in June, 1891, the money to pay the coupons due on
134 their face January 1st, 1891, to be used by him or his agents for that purpose. I know nothing personally about any of these payments except by communications and reports from the Atlanta national bank and Messrs. N. J. and T. A. Hammond. We never authorized the Laniers or anybody else at West Point to pay any interest but our agents may have requested such payments to be made and may have made payments there.

In regard to the date of my letter to the Atlanta national bank in December, 1890, in my answer above given the date of the said letter appears as follows "27th." of December, 1890 this is an error, this date should be "29th." of December, 1890.

D. JANNOPOULO.

Answered, sworn to and subscribed before us this 7th day of December A. D. 1891.

[L. S.] HORTON POPE, *Commissioner.*
[L. S.] W. PALMER CLARKSON, *Commissioner.*

UNITED STATES OF AMERICA, *Northern District of Georgia.*

In the Circuit Court of the United States for the Northern District of Georgia.

To Horton Pope and Bruno Seeman:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company *et al.*;

And whereas, John C. Orrick is a material witness in said suit on behalf of the defendants and can not attend said circuit court in person without manifest inconvenience;

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed and you, or any two or more of you, are hereby authorized and required to cause the said John C. Orrick personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the
135 same being plainly and distinctly written, your are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of Nov., 1891.

[SEAL.] O. C. FULLER, *Clerk.*

Interrogatories.

Bill for foreclosure of mortgage.

In U. S. Circuit Court for Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by John C. Orrick, a witness material for said defendants and who resides out of said county, to-wit, in St. Louis, Missouri.

1. If as agent for D. Jannopoulo or anyone else interested in above bill you talked with said plaintiff or with Denson, adm'r or executor

of Walker about why said suit was brought, state all of such conversation pertinent to this matter and if either showed you any paper, state what paper and its contents.

2. State anything else you know to benefit said defendants.

N. J. & T. A. HAMMOND,
Def'ts' Att'ys as per Record.

Acknowledgment of Service.

Service acknowledged and copy waived. Let commission issue in blank without order of court.
Nov. 14, 1891.

ABBOTT & SMITH, *Pl'ff's Sol's.*

Filed in clerk's office 14 day of Nov. 1891.
O. C. FULLER, *Clerk.*

136 Bill for the foreclosure of mortgage.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MANUFACTURING CO. ET AL.

STATE OF MISSOURI,
City of St. Louis.

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, we have called John C. Orrick the witness in the deposition named to come before us and being duly sworn true answers to make to the interrogatories to said commission annexed, deposes and answers as follows: To the first interrogatory first he answers that, as attorney and agent for D. Jannopoulo and the Huguley Manufacturing Company, on the 29th day of January, 1891, he visited Lafayette, Ala., for the purpose of tendering to Mr. Denson, the administrator or executor of the Wharfar estate, the July coupons on the Alabama & Georgia Manufacturing Company, coupons, held by him as administrator or executor of that estate, and also to ascertain from him and Judge Robinson, one of the trustees in the Alabama & Georgia Manufacturing Company's mortgage, why this suit was brought. On the morning of the 29th day of January, 1891, he started in a buggy with John T. Higginbotham from West Point to Lafayette, leaving Mr. Jannopoulo at the hotel at West Point. We arrived at Lafayette about mid-day. After dinner Mr. Higginbotham and

myself went to Mr. Denson's law office and found him in. I proceeded at once to state the object of my visit. He informed me that he held for that estate twenty bonds, that he wished to make a division of the estate and therefore wanted the money for his bonds, I told him that his interest money for his July, 1890, coupons had been placed at the Atlanta national bank in due time for him as well as all the other like coupon holders, and I did not understand why they refused to take the money; that I had brought with me sufficient money
137 in legal tender to pay to him the amount of those coupons and offered him the money, which he declined to receive, stating that he would not take the interest, but would take payment for his bonds. He then stated to me that the Huguley Manufacturing Company had failed to deposit the money to pay the July, 1890, coupons at the Atlanta national bank in due time; I, in answer, said that he was mistaken; that I knew the money had been sent from St. Louis to the Atlanta national bank on the 29th, of December and that by ordinary course of mail the money should have reached the Atlanta national bank on the morning of the 31st of December. I think I mentioned to him that letters, which were sent to West Point, Georgia, in the same mail with that to the Atlanta national bank on the 29th of December, were received at West Point on the 31st of December. We then had some conversation about the time when these coupons should be paid, the first of January being a legal holiday. I remarked that even if the money had not arrived before the first of January, it was not our fault that it was not paid on that holiday, the bank being closed, and that surely the payment on the second of January would have been in ample time. Then Mr. Denson informed me that we did not offer on the second of January to pay these July coupons; I remarked that he certainly was in error about that, as we had caused notice to be published in the Atlanta Constitution in its issue of the second of January, announcing that the July, 1890, coupons would be paid on presentation at the Atlanta national bank. He then stated while this might be so, that the Atlanta national bank had nevertheless telegraphed W. C. & L. Lanier, bankers at West Point to pay, not the July, 1890, coupons, but the January, 1891, coupons. I expressed surprise at this and asked him whether that mistake had not been corrected by the bank. My recollection is he informed me that they had, but not until the third of January and then it was too late. I told Mr. Denson, that I could not understand this, as the Atlanta national bank owned four of those bonds and had accepted payment of its coupons due July, 1890, hence it could not have been under misapprehension as to what coupons were to be
138 paid. Mr. Denson on this last statement of mine, seemed very much taken aback, and he remarked, "Do I understand you to say Mr. Orrick, that the Atlanta national bank has accepted payment of its July, 1890, coupons?" I said, "Emphatically yes," then he remarked, "Well, if that is so I may accept interest for my July coupons." Mr. Denson seemed so much surprised at

my statement that the Atlanta national bank had accepted payment that I thought possibly I might be mistaken as to the information on this subject, which I had obtained from Mr. Jannopoulo, but said to Mr. Denson, Mr. Jannopoulo is now at West Point and when I return this evening I will see him and have him, if possible, confirm the statement I have made to you. Mr. Denson then requested me, on my return to West Point to see Mr. Jannopoulo on this subject and wire to him the result of my conference. On my return to West Point that night I did see Mr. Jannopoulo, and found that he had in his possession in his valise at the hotel the July, 1890, coupons which had been attached to the Atlanta national bank's four bonds and which had been paid. The next morning from West Point I wired to Mr. Denson substantially as follows: "July, 1890, coupons Atlanta national bank paid. Jannopoulo has them here in his possession." I rather anticipate hearing from Mr. Denson after this dispatch and have him inform me that he would also accept his interest, but I did not and have not since.

In reference to the connection of the Atlanta national bank with this bill of foreclosure, on my expressing some doubt, under the circumstances, that the Atlanta national bank had taken any part or was interested in this bill for foreclosure, Mr. Denson smiled and gave me to understand that Messrs. Abbott & Smith, the attorneys of the Atlanta national bank, had prepared the bill. From Mr. Denson's office I proceeded with Mr. Higginbotham to the residence of Judge Robinson, the complainant in this case. We found him at home sick and his son was quite ill in bed in the same room with the judge. The judge was apparently scarcely able to sit up and I felt great hesitancy in annoying him with questions about the matter in hand. I asked him if he or anybody else, so far as he knew, had served any notice upon the president of the Alabama and Georgia Manufacturing Company, calling attention to any default in the payment of the interest on the bonds, or had made any
139 demand for payment upon any one, and he stated he had not given any notice or made any demand and knew nothing about any notice. I then asked him whether he had served any notice on the Huguley Manufacturing Company, calling attention to any default in the payment of interest. He said he had not. I then asked him why he had filed the bill and his answer was that he was acting under the advice of Mr. Denson and what Mr. Denson told him to do in the matter he had done, and referred me to Mr. Denson. As I had already seen Mr. Denson I did not call again, but Mr. Higginbotham and myself proceeded at once from Judge Robinson's house to West Point.

In view of conduct of Atlanta national bank the money for January, '91, coupons was sent direct to N. J. Hammond as advised by me. This answer may be treated as an answer, not only to the first, but to the second interrogatory, and further deponent saith not.

JOHN C. ORRICK.

Answered, sworn to, and subscribed before us this 23rd day of November, 1891.

[L. S.] HORTON POPE, *Commissioner.*

[L. S.] BRUNO SEEMAN, *Commissioner.*

$$ to be taxed as costs for commissioners.

UNITED STATES OF AMERICA, *Northern District of Georgia.*

In the Circuit Court of the United States for the Northern District of Georgia.

To Horton Pope and Bruno Seeman:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson trustee and Alabama & Georgia Manufacturing Company *et al.*

And whereas, D. Jannopoulo is a material witness in said suit on behalf of the defendants and can not attend said circuit court in person without manifest inconvenience.

140 Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said D. Jannopoulo personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14 day of November, 1891.

[SEAL.] O. C. FULLER, *Clerk.*

Bill for foreclosure of mortgage.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by D. Jannopoulo, a witness material for said defendants and who resides out of said county, to-wit, at St. Louis, Missouri.

1st. If since the sale of the mortgaged property of said defendant by Fisher, receiver, any insurance has been kept on the same and is

yet kept state in what amounts and to whom payable and who paid the premiums? Who holds said policies?

2nd. If since said sale any improvements have been made on said premises or any repairs or any additions of machinery or other valuable thing, give as far as you — a statement thereof and the cost and who paid same?

3rd. How came the Huguley Manufacturing Company into possession of said property? What right or title has it to same?

4. State anything else you know to benefit said defendants.

N. J. & T. A. HAMMOND,
Att'ys for Def'ts as per Record.

141 Service acknowledged and copy waived. Let commission issue in blank without order of court.
Nov. 14, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH, *Pl'ff's Sols.*

Filed in clerk's office, 14 day of Nov., 1891.
O. C. FULLER, *Clerk.*

Cross Intgs.

1. Who bought the additional machinery? From whom was it bought? Who paid for the same? Give the name of each person or corporation from whom the machinery was bought.

2. How do you know what machinery was bought or additions made to the property?

3. What position did Logan Owens hold in said factory? In what position if any was he employed by the Huguley Mfg. Co.?

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON, *Sols. for Pl'ff.*

Bill to foreclose mortgage.

In U. S. Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
v.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

STATE OF MISSOURI, *City of St. Louis,* } *ss:*

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, to us directed, we have caused D. JANNOPOULO the witness in said com-

mission named to come before us and being duly sworn true answers to make to the interrogatories to the said commission annexed deposes and answers as follows:

142 To the first interrogatory he answers that since the sale of the mortgage property of the Alabama and Georgia Manufacturing Company, by Fisher, receiver, the mortgaged property has been kept fully insured from the time of the sale down to the present time, and $65,000 of said insurance, in standard insurance companies, has been kept from the time of said sale down to the present time, and in case of loss such insurance is payable to the trustees in said mortgage. The Huguley Manufacturing Company paid the premiums and the policies are now in the possession of the Huguley Manufacturing Company here in St. Louis, for safe keeping; that the insurance on the property of the Huguley Manufacturing Company prior to January 1st, 1891, and continuously down to the present time, has been a total of $200,000, and all of said insurance has been held in standard insurance companies, represented by Torbitt & McCandless, and a part for a short time by Mr. Jackson of West Point.

For answer to the second interrogatory he states that since said sale by said Fisher, receiver, the Huguley Manufacturing Company has made improvements to its mill and machinery and repairs, as follows: $14,186.10 was spent in improvements and maintaining its value. As soon as we obtained the property from Mr. Fisher we commenced making important repairs and have continued right along since. These repairs were paid for by the Huguley Manufacturing Company.

For answer to the third interrogatory he states that the Huguley Manufacturing Company came into possession of said property through conveyances as follows: H. C. Fisher, receiver, to Malcolm Graham, J. C. Orrick and John M. Chilton, trustees; the same parties thereafter conveyed to the Huguley Manufacturing Company; also W. H. Huguley & Co., quit-claimed all their interest to the Huguley Manufacturing Company. The title possessed by the Huguley Manufacturing Company is all the title which the Alabama and Georgia Manufacturing Company had, together with the quit-claim of W. H. Huguley & Co., for the same.

Cross Interrogatories.

143 In answer to cross interrogatory first he states that the additional machinery bought was purchased by the Huguley Manufacturing Company through him as president. This machinery was bought from different parties, for example, we bought from Boston new carding cloth from Stoddard Lovering & Co.; we bought from Moore Reed & Co., of Baltimore, new parts of machinery to substitute for old parts, and from others. We have had constantly employed mechanics in the mill, paying out about $350.00

each month for their services in repairing and straightening out the machinery. We renewed the water house and purchased lumber for that purpose, improved the water dam, we built two new houses for operatives and repaired the others, some thirty or forty. We repaired the mill building, roofs, etc. I can not give the items of all the names.

In answer to interrogatory second he states: I know of the machinery bought, as the same was done on my order and also the additions of the property. The amount mentioned as having been spent on the property was applied not only to additional machinery, but generally to betterments of the property. I have the vouchers in my office here, which shows these expenditures.

In answer to interrogatory third he states: Logan Owen held the position of superintendent, which position he occupied from August, 1890, to August 20th, 1891, and in this connection I exhibit herewith a letter from Mr. Owen, tendering his resignation, in which he says the mill property has improved 50 per cent. since he took charge of it. I hereto attach that letter, dated August 20th, 1891, and signed by L. Owen, which is marked Exhibit A. And further deponent saith not.

D. JANNOPOULO.

Answered, sworn to and subscribed before us this 24th day of November, A. D., 1891.

[L. S.] HORTON POPE,
Commissioner.

[L. S.] BRUNO SEEMAN,
Commissioner.

Commissioners' fee $4 paid by D. Jannopoulo.

EXHIBIT A.

AUGUST 20TH.

D. Jannopoulo, pres't, St. Louis, Mo.

DEAR SIR: Have telegraphed you this morning.
144 Have accepted another position. Mr. Hick will take charge of mill until further instructions and now confirm same. I will assist Mr. Hick all I can, and stay with him 8 or 10 days as mill is now in fair condition. I estimate its improvement at 50 per cent. and think Mr. Hick can manage it nicely. Have plenty of help now and think he can get along with them.

Thanking you for the past, I remain yours very truly,

L. OWEN.

Bill, &c.

In Circuit Court of United States, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

Counsel for plaintiff and defendant agree that the following facts may be considered as proven in the cause, without putting parties to the expense of proving the same formally on the trial.

That all of the property of said Ala. & Ga. Mfg. Co., mortgaged by the trust deed was sold by Fisher, receiver, on the first Tuesday of January, 1890, before the court house door of Harris county to the highest bidder, and the same was purchased by certain persons who transferred all of their rights, title and interest in the property to the Huguley Mfg. Co., and that said company is now in possession of the same; that the sale was made subject in all respects to the lien of said mortgage or deed of trust, made to secure the bonds of the Ala. & Ga. Mfg. Co.

That said W. C. Yancey died prior to the filing of this bill.

That W. T. Huguley is interested adversely to the plaintiff in this cause.

Counsel agree that the mortgage may be proven by certified copy without accounting for the original, should W. T. Huguley fail to produce the same as he is notified to do and that but one of the bonds need be put in evidence by plaintiff, it being admitted that the others are fac similes of it, except as to numbers thereon,
145 and that the others at the date of the beginning of the suit were owned by the persons named as holders in the testimony of J. T. Higginbotham, J. J. Robinson, W. C. & L. Lanier and Carrier in this case.

Counsel agree that the letter and postscript of J. R. Lewis, postmaster, hereto attached, may read as his evidence with like effect as if sworn to by him. Complainant on the trial of said cause will admit also as follows: H. C. Fisher was appointed receiver of the Alabama & Georgia Manufacturing Co., on the — of November, 1888.

At the last annual meeting of the directors of Ala. & Ga. Mfg. Co., W. H. Huguley was elected its president.

The equity of its redemption in and to said mortgaged property only was bought by Graham, Orrick Chilton.

N. J. and T. A. Hammond, on the 19th of June, 1891, offered to pay interest to plaintiff Robinson, as per the copy letter hereto attached, and that Robinson declined to accept interest, as shown by his letter and that of Denson, hereto attached. N. J. & T. A. Hammond's original letter need not be accounted for, nor the hand writing of the others proven. And that on the 10th of December, 1891, N. J. & T. A. Hammond made to Robinson, trustee, the offer in their

letter of that date, a copy of which is hereto attached, and he declined said offer, and the letter need not be produced; and counsel for plaintiff admit that said offer and advertisement was about to be repeated as to the interest due January 1st, 1892, but plaintiff's counsel, to save expense of advertisement and profit agreed to consider such offer made and refused.

On the 26th of June 1891, at West Point, Ga., the following notice was published in the West Point *Press* to wit:

Notice.—"All coupons which fell due 1st January, 1891, to the first mortgaged bonds of the Alabama & Georgia Manufacturing Company, plus interest on said coupons from January 1st, 1891, will be paid on presentation to John J. Higginbotham, at the office
146 of said company at the store of W. H. Huguley & Co., West Point, Georgia, or at the office of N. J. & T. A. Hammond, Atlanta, Ga., at the option of the holders.

HUGULEY MANUFACTURING CO.
D. JANNOPOULO, *President.*"

And like notice was published therein as to the interest due July 1st 1891 and a like refusal to accept was made as stated by Higginbotham as to the interest due July 1, 1891.

Also in Jan'y 1891 was published in the Atlanta *Constitution* the notice set forth in the testimony of D. Jannopoulo but its first appearance was Jan'y 2, 1891.

And afterwards, on the 28th, of June 1891, the following notice was published in said *Constitution.*

Notice.—"All coupons which fell due January 1, 1891, to the first mortgage bonds of the Alabama & Georgia Manufacturing Co., plus interest on said coupons from January 1, 1891 will be paid on presentation to John F. Higginbotham at the office of said company at the store of W. H. Huguley & Co., West Point, Ga., or at the office of N. J. & T. A. Hammond, Atlanta, Ga., at the option of the holders.

HUGULEY MANUFACTURING CO.
D. JANNOPOULO, *President.*"

And afterwards on December 11th, 1891, appeared the following notice:

Notice.—"All coupons which fell due 1st July, 1891, to the first mortgage bonds of the Alabama & Georgia Manufacturing Company, plus interest on said coupons from January 1st, 1891, will be paid on presentation to John T. Higginbothom, at the office of said company, at the store of W. H. Huguley & Co., West Point, Ga., or at the office of N. J. & T. A. Hammond, Atlanta, Ga., at the option of the holders.

HUGULEY MANUFACTURING CO.
dec 11 d 3t D. JANNOPOULO, *President.*

All these notices appeared three days successively; and we waive production of the papers containing the said notices.

Fisher, receiver by direction of the court ran said Ala. &
147 Ga. Mfg. Co. until about — months before the date of the decree, to-wit, —— —, 1899; but he kept an office as receiver in West Point, Ga., until he turned the property over to the purchasers sometime in January 1890, that at the date of his appointment and service he lived and has continued to live at Newnan, Ga., and is still receiver of said company.

Counsel admit that the allegations of facts in the petition of the St. Louis Trust Company, trustee, are true, and that their mortgage is subject to the older lien of the mortgage to plaintiff and his co-trustees.

All these consents and admissions are made for this case only. Subject to objections as to the competency of any of the same. This December 31, 1891.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sol's for Plaintiff.
N. J. & T. A. HAMMOND, *For Def'ts.*

ATLANTA, GA., *June* 19, 1891.

Judge J. J. Robinson, Lafayette, Ala.

DEAR SIR: We are ready to pay the coupons falling due the first day of Jan'y 1891, and the interest thereon since that time, of the bonds of the Alabama & Georgia Manufacturing Company, concerning which bonds you brought suit as trustee, in the U. S. Federal court for foreclosure of the mortgage.

Or we will pay any part of the same which may be presented here to us, or if you prefer, we will have the same sent to you personally, or pay it to you at the old office of said company at West Point. Or if more agreeable to you, and you will furnish us the names of the holders whom you represent, we will have the tender made to them directly.

If you furnish us such list, please state the number of bonds held by each, so that we may know what amount will be due to each.

Prompt answer will oblige
Yours truly, N. J. & T. A. HAMMOND.

148 ATLANTA, GA., *Dec.* 10, 1891.

Judge J. J. Robinson, Lafayette, Chambers county, Ala.

DEAR SIR: On the 19th of June last, we wrote you as follows:

"We are ready to pay the coupons falling due the first day of Jan'y, 1891, and the interest thereon since that time, of the bonds of the Alabama & Georgia Manufacturing Company, concerning which

bonds you brought suit as trustee, in the U. S. Federal court, for foreclosure of the mortgage.

Or we will pay any part of the same which may be presented here to us: or if you prefer, we will have the same sent to you personally, or pay it to you at the old office of the company at West Point. Or if more agreeable to you, and you will furnish us the names of the holders whom you represent, we will have the tender made to the- directly.

If you furnish us such list, please state the number of bonds held by each, so that we may know what amount will be due to each."

You replied to us on June 23rd as follows:

"Your favor of June 19, 1891, received, in which you propose to pay the Jan. '91 interest on the bonds of the Ala. & Ga. Mfg. Co., in certain ways therein stated. In reply would say that my attorney, Col. N. D. Denson, will be in Atlanta next Friday and see you in reference to it."

Your attorney, Mr. Denson, did not come to Atlanta as you expected, but on the 25th of June wrote us as follows:

"The trustee is still of the opinion that the terms of the trust deed have been violated and that a foreclosure of the trust deed ought to be had, and he declines the proposition submitted in your letter and will press his suit for a foreclosure."

We now repeat our offer of June 19th, 1891, both as applies to the coupon falling due the first day of January, 1891, and the interest thereon since that date, and enlarge it to cover also the coupons falling due on the first day of July, 1891, and the interest thereon since that time. Either or both will be paid by us here or by Mr. Higginbotham at West Point, according to the terms of our said letter of June 19th, as you may prefer.

149 Should you decline this offer, as we suppose from your former letter you will, we will be obliged if you will simply decline in such terms as you see proper on this letter itself, and return it to us, so as to save the trouble of serving you with notice to produce and with taking evidence to prove the fact of sending you this letter.

Yours truly, N. J. & T. A. HAMMOND.

LAFAYETTE, ALA., *June* 23, 1891.

N. J. & T. A. Hammond, att'ys, etc., Atlanta, Ga.

D'R SIR: Your favor of June 19, '91, received, in which you propose to pay the Jan'y '91 interest on the bonds of Ala. & Ga. Mfg. Co., in certain ways therein stated. In reply would say that my attorney Col. N. D. Denson will be in Atlanta, next Friday and see you in reference to it.

Yours truly, J. J. ROBINSON, *Trustee, etc.*

LAFAYETTE, ALA., *June* 25, 1901.

Hon. N. J. Hammond, Atlanta, Ga.

MY DEAR SIR: I can not go to Atlanta tomorrow as I had expected to go. The trustee is still of the opinion that the terms of the trust deed have been violated and that a foreclosure of the trust deed ought to be had, and he declines the propositions submitted in your letter, and will press his suit for a foreclosure.

With kind regards I am, very respectfully yours,

N. D. DENSON.

ATLANTA, GA., *Nov.* 17*th*, 1891.

Hon. N. J. Hammond, Atlanta, Ga.

DEAR SIR: In reply to yours of Nov. 13th will state that the time from St. Louis, Mo., to Atlanta, Ga., now is 23 hours and 5 minutes arriving here 6:40 p. m. and 23 hours and 10 minutes arriving here 7 a. m., the schedules in Dec. and Jan'y last were about the same as now if any difference it is only a few minutes. Distribution of mail is made shortly after reaching this office. The *Constitution* and Atlanta national bank sent for their mail at that time.

Respectfully, J. R. LEWIS, *P. M.*

150 P. S.—St. Louis mail reached this office a year ago by the Chattanooga & Atlanta Ry. P. O., now it comes by the same trains, but by the Nashville & Atlanta Ry. P. O. By regular schedule mail leaves St. Louis, Mo., at 7:50 a. m. and 7:35 p. m. and reaches Atlanta 7:00 a. m. and 6:40 p. m. arriving at the post office 15 to 20 minutes later.

Dec.	30th., '90,	these	mails	arrived	in	this	office	at 7:15 a. m. and 6:55 p. m.
"	31st, '90,	"	"	"	"	7:20	"	" 7:00 p. m.
Jan'y	1st, '91,	"	"	"	"	7:05	"	" 7:38 p. m.
"	2d, '91,	"	"	"	"	7:45	"	" 7:30 p. m.

At dates above given the morning train was due at 6:48 a. m. at Atlanta. No regular St. Louis mail reaches this office by the W. & A. R. R. train at 1:45 p. m. There may be some missent mail from St. Louis by that train. As a rule, mail is distributed to its boxes within an hour after its arrival, generally much sooner.

Respectfully, etc., J. R. LEWIS, *P. M.*

Petition as to Taxing Fees of Counsel.

Bill for foreclosure, etc.

In said Circuit Court of U. S. for Said District.

J. J. ROBINSON, Trustee,
vs.
THE ALABAMA & GEORGIA MANUFACTURING CO. ET AL.

Decree at March term, 1892.

To the judges of said circuit court:

The petition of J. J. Robinson as trustee, and plaintiff in the above stated cause, shows, that for the purpose of prosecuting said foreclosure proceedings, and bringing the property mentioned in the pleadings, under control of the court, and securing the same for the purposes of the trust which is fully set out in the pleadings in the cause, your petitioner has been compelled to employ counsel, and to that end he employed as his solicitors, Dorsey, Brewster & Howell, Abbott & Smith and N. D. Denson.

Your petitioner alleges, that said solicitors named, prosecuted said cause to final decree, and that his counsel fees are a charge on the trust property, as a part of the expenses of said cause, and that he should have decree taxing the same thereon over and
151 above the principle and interest due on the bonds secured by the mortgage, and over and above the ordinary costs.

Petitioner alleges, that his solicitors should be paid the sum of $7,500.00, and prays a decree, in his favor for the benefit of said solicitors taxing said sum as a part of the costs of the cause, as between solicitors and client.

Wherefore he prays an order be passed requiring the defendants to show cause on the 2d day of April prox. at 10 o'clock a. m., why a decree should not be entered in the cause taxing said sum as a part of the costs of administration.

And your petitioner will ever pray.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON, *Solicitors for Plaintiff.*

It is ordered that defendants show cause before me on Saturday the 2d of April 1892, why the prayer of the above and foregoing petition should not be granted.

In open court, March 31st, 1892.

WILLIAM T. NEWMAN,
United States Judge.

Due and legal service of the within petition order of the chancellor acknowledged. Copy waived.
This 31 March 1892.

N. J. & T. A. HAMMOND,
Att'ys for Def'ts as p'r Record.

Filed in clerk's office, 20 day of May, 1892.

O. C. FULLER, *Clerk.*

Answer of Def'd'ts to Petition to Tax Counsel Fees.

Bill for foreclosure, etc.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL.

In answer to the order to show cause why a decree should
152 not be entered in said cause taxing said sum of $7500.00 as part of administration, defendants through their counsel undersigned show cause as follows:

1. There is nothing in the pleadings or facts of said case, as the same appear of record in said court which will authorize or justify any charge upon the property which was mortgaged, over and above the principal, interest, and such costs as belong to the cases ordinarily in court, exclusive of counsel fees.

2. Under the records and facts disclosed aforesaid, counsel fees for the complainant can only be taxed upon the fund which shall be brought into court under said decree.

3. Until said fund is in court, and the parties who intend to participate therein are known and brought before the court, the quantum of fee can not be properly fixed, because the same must come out of said fund.

4. These defendants if right in the foregoing positions, have no interest whatever in the fees of complainant's solicitors. If they have they submit that the amount charged, to wit, $7,500.00 is excessive and exhorbitant. The services rendered are worth no such sum.

Defendants therefore pray that the court shall dispose of this motion on demurrer covered by the first three grounds of this answer, and afterward, if it be necessary, refer the amount of compensation to a master, who will take testimony and report concerning the same to the court.

N. J. & T. A. HAMMOND,
Att'ys for Def'ts as p'r Record.

Filed in clerk's office April 4, 1892.

O. C. FULLER, *Clerk.*

Let this paper be considered as now filed. Service of copy acknowledged. This 4th April 1892.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sol's, &c.

Demurrer sustained on the ground that pl'ff's counsel have
153 no right to their fees to be taxed against defendants. Their rights to such fees must be put upon the fund raised under the decree.

This 25 May, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 25 day of May, 1892.

O. C. FULLER, *Clerk.*

Order Allowing Pl'ff to Except to Order Sustaining Demurrer and Noting Same.

Pet'n of pl'ff to tax sol's fee in said cause.

In U. S. Circuit Court, Nor. Dist. Ga.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL.

The exception of pl'ff to the decision of the court sustaining the demurrer to the petition is hereby noted on rendition of decision of the court and at the time for the filing of the same and leave given to except as provided by law and rules of practice.

This 30 May, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 day of May, 1892.

O. C. FULLER, *Clerk.*

Opinion of the Court on Petition to Tax Counsel Fees.

In United States Circuit Court, Northern Dist. of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MFG. CO. ET AL.

In this case a final decree of foreclosure has been directed in favor of complainant and the court is now asked to determine the question of an allowance for counsel fees for legal services rendered on behalf of Robinson, trustee.

The petition to this end filed by complainant, prays that
154 reasonable counsel fees may be allowed against the defendant, and taxed as a part of the costs in the case. There is no provision in the trust deed for the payment of counsel fees in case of a foreclosure in court. There is a provision for the payment of the expenses of the trustee in the event he entered upon the property and sold the same as provided in the trust deed. The provision for the payment of expenses would probably include reasonable counsel fees if the trustee had proceeded in that manner to execute that trust, but he filed his bill in court for a regular decree of foreclosure. The property embraced in the trust deed having been sold by a receiver in a former proceeding, however, and the property purchased by third parties, the proceeding in court, it is suggested, was considered a necessity, and it probably was. The court is called upon now to determine whether or not the fees of a counsel representing the trustee shall be taxed against the defendant in addition to the principal and interest of the bonds and the ordinary costs in the case, the application to have counsel fees thus attached, being strenuously resisted by defendant.

Quite a number of authorities have been cited both for and against this application, and by both sides; but the main reliance of defendant is upon a decision of the Supreme Court in the case of Fowler *v.* Equitable Trust Company, 141 U. S., 384, and that of complainant upon a recent decision of the Supreme Court, in the case of Dodge *et al. v.* Tulleys, trustee, *et al.* (decided April 11th, 1892, and published in advance sheets No. 6). In the case of Fowler *v.* Equitable Trust Co., there was a provision in the trust deed very much like the provision in the deed in this case. It provided for an allowance in case of sale by the trustee at public auction upon advertisement, of all expenses, etc., and there was a proceeding in court to foreclose the mortgage and a decree. The proceeding to foreclose was instituted by the holders of the bonds as appears from the report of the case, and not by the trustee, and it was held that fees of solicitors for complainant could not be recovered against the defendant. The only difference between that case and the case now

before the court is, that the proceeding was there instituted by the holders of the bonds and not by the trustee, and it is con-
155 tended that that is very material in considering its weight as authority here. It seems from a sentence in the opinion, that the reason for that suit being brought by the holders of the bonds and not by the trustee, was a refusal of the trustee to act, and that this was urged as an additional reason for the allowance of counsel fees. The language of the court, so far as material to the question in consideration is as follows:

"The trust company insist that the decree should have made to it an allowance for solicitor's fees. There is no foundation for this claim. The trust deed provides that in the case of a sale by the trustee, at public auction upon advertisement, all costs, charges and expenses of such advertisement, sale and conveyance, including commissions, such as were at the time of sale allowed by the laws of Illinois, to sheriffs on sale of real estate on execution, should be paid out of the proceeds. This provision does not impose upon the borrower the burden of paying to the lender a solicitor's fee where suit is brought for foreclosure. The commissions referred to in the deed are allowed only where the property is sold upon advertisement by the trustee without suit. The trust deed made no provision for a solicitor's fee to the company in the event suit was brought. That a suit became necessary because of the refusal of the trustee to act, is no reason for taxing such a fee against the mortgagor."

As stated, the only difference between that case and the case under consideration is that in this case the trustee brought suit for foreclosure. If a trustee may recover from the defendant his expense for counsel fees in a case like this, why in the event the trustee refuses to act, and it becomes necessary for the holders of the obligations secured by the trust deed to employ counsel themselves to enforce the trust deed, should they not have the same right? In the one case the trustee employs counsel to collect the debt of his *cestui que trust*, and in the other the beneficiaries employ counsel to represent themselves and enforce the trust deed, and it would be very difficult to find any distinction in principle between the rights in the two cases.

The case of Dodge *et al. v.* Tulleys *et al.*, it is earnestly urged controls the question here, whatever effect may be given the
156 Fowler case just discussed. That was a suit brought (in the Dodge case) by a trustee to foreclose a mortgage securing certain indebtedness, and there was an allowance to counsel of complainants a fee of one thousand dollars. The Supreme Court reduced the fee by one half, but held that it was properly taxed. The language of the court, as appears from the advance sheets of the decision, so far as it is necessary to cite here is as follows:

"The remaining proposition of appellants, is that the court erred in allowing a solicitor's fee of $1,000. There is a stipulation in the trust deed for the payment of an attorney's fee of one thousand dollars, in case of foreclosure, but such stipulations have been held by

the supreme court of Nebraska to be unauthorized. Dow *v.* Updike, 11 Neb. 95; Hardy *v.* Miller, 11 Neb. 395. It seems that in 1873 an act passed the legislature of Nebraska expressly authorizing in any written instrument for the payment of money a stipulation for not exceeding ten per cent. as attorney's fee in case of suit. Neb. Gen. Stats. 98. This act was repealed in 1879. Laws of Neb. 1879, p. 78. In the cases cited, the supreme court of the State held that by the repeal of the statute the contract right to recover attorney's fees was taken away. So, as this court follows the decision of the highest court of the State in such matters. (Bendey *v.* Townsend, 109 U. S. 665 [27 :-1065]), the provisions in the trust deed for the payment of $1,000 as attorney's fees can not be regarded as of binding force. But while contract rights are settled by the laws of the State, that law does not determine the procedure of courts of the United States sitting as courts of equity, or the costs which are taxable there, or control the discretion exercised in matters of allowances. Those courts acquire their jurisdiction and powers from another source than the State. There is no statute of Nebraska in respect to the matter. Even if there were one expressly prohibiting courts of equity from making allowances to trustees or their counsel, such prohibition will not control the proceedings in Federal equity courts. They proceed according to the general rules of equity except so far as such rules are changed by the legislation of Congress, and while they may enforce special equitable rights
157 of parties given by State statutes. (Hollen *v.* Challen, 110 U. S. 15 [28: 52]), yet their general powers as courts of equity are not determined and can not be cut off by any State legislation. It is the general rule of equity that a trustee called upon to discharge any duties in the administering of his trust is entitled to compensation therefor, and included therein is a reasonable allowance for counsel fees. This is constantly enforced in the Federal courts in the various railroad foreclosures that have been and are proceeding therein; and this, irrespective of any State legislation. The subject was exhaustibly considered by Mr. Justice Bradley, in the case of Internal Imp. Fund Trustees *v.* Grennough, 105 U. S., 527 (26: 1157). The English and American authorities were fully reviewed, and the power and duty of the court to make reasonable allowances (including counsel fees) to trustees or others acting in that capacity was affirmed. See also Central R. & Bkg. Co. *v.* Pettus, 113 U. S. 116 (28: 915). It is unnecessary to more than refer to these decisions. In the case before us, a trustee comes into a court of equity and asks its aid in enabling him to discharge the duties of his trust, and according to the settled law of this court, he is entitled to an allowance for reasonable counsel fees. But we think $1,000 is too much. Indeed, in the bill of complaint, the trustee alleges that $500 is a reasonable attorney fee for the foreclosure of the first deed; and we think that under the circumstances no more should be allowed."

It is true, certainly, that the court in this case sustained the court

below in taxing the counsel fees of the trustee in a case like this, and held that it was in the general powers of the Federal courts to do what was done there. But I do not understand the case to go to the extent contended for by counsel for complainant here. They contend, as I understand them, that the rulings in that case is, that it is the right of the trustee in a case like this to recover his counsel fees against the defendant,—that is, that it was a matter of right to have counsel fees so taxed. I do not so understand the decision. The court below had taxed complainant's counsel fees against the defendant, and the Supreme Court, for reducing the amount of the fee simply affirmed this, and placed it upon the general
158 powers of the Federal court to tax the costs in the case. There is nothing whatever in the decision to justify the contention that the court there decided that the trustee, as a matter of right, should have counsel fees taxed against the defendant in a case like this.

The court having this opinion as to the general effect of the decision cited, it may next be considered whether it is a case in which the court, in its discretion, will cause the fees of counsel for complainant to be taxed against defendant. This bill was filed because of non-payment of interest which, under the contract, gave the right to foreclose, and a serious question was made by the pleadings and the proof in the case as to whether or not the right to foreclose existed at the time the bill was filed, but the court sustained this right and directed a final decree. No right can be claimed here in this respect because of any liability incurred by the trustee in the performance of his duties, because, it appears from the evidence in the case, that the trustee required an agreement that he should not be responsible for counsel fees before he would allow the use of his name in the suit; and the case has really more the appearance of the holders of these obligation- proceeding through the trustee, as a mere nominal party, than the act of the trustee, in the discharge of the duty incumbered upon him by virtue of a trust which he had assumed and agreed to carry out. Again, the property covered by this trust deed was placed in the hands of a receiver of the State court in a proceeding against the Ala. & Ga. Manufacturing Company, and by a decree of that court was sold—and is now the property of the Huguley Manufacturing Company, who hold the property subject to this mortgage under the terms of that purchase at the receiver's sale. There is nothing whatever in this contract, as has been stated, providing that counsel fees of complainant should be paid in the event of a foreclosure in court, and if the same should be taxed here against the defendant, it would be increasing the amount of the mortgage to that extent in the absence of a provision in this trust deed for counsel fees, and the law requiring it be taxed it would be placing the burden on the purchasers of this property, which they did not assume and cannot be held to have assumed when they bought the property at the receiver's sale.

159 The conclusion is, that this is not a case where the court is required by law to tax counsel fees of the complainant against the defendant, and in the absence of any such requirement, and considering the question under the general rule applicable in courts of equity, such a case is not made, as the court would, in its discretion, give it that direction. But the court will leave the matter of compensation of complainant's solicitors open until the fund is brought into court derived from the sale of the property under the decree which has been directed and will then make such order for the payment of counsel fees and for such an amount as may be proper.

An order may be taken sustaining the demurrer upon the ground above stated.

This May 27th, 1892.

WILLIAM T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 day of May, 1892.

O. C. FULLER, *Clerk.*

Final Decree.

In the Circuit Court of the United States for the Northern District of Georgia, March Term, 1891.

J. J. ROBINSON, Trustee,
vs.
THE ALABAMA & GEORGIA MANUFACTURING Co. *et al.* } No. 360. In Equity.

This cause came on to be heard, at the present term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:—

1. That the plaintiff, J. J. Robinson, as trustee for the holders of the bonds and coupons of The Alabama & Georgia Manufacturing Company, one of the defendants herein, do recover of and from said Alabama & Georgia Manufacturing Company the sum of sixty-five thousand ($65,000.00) dollars principal, due on one hundred and thirty bonds of said company, secured by deed of trust covering the property hereinafter described, and the sum of — dollars due on the unpaid coupons on said bonds and the sum of — dollars in-
160 terest due on said coupons, said amounts to be ascertained by the special master to be hereafter provided for and the further sum of — dollars, as costs, said costs to include one hundred and twenty dollars to be paid to counsel for commissioner's fees for taking testimony, in lieu of statutory commissioner's fees.

2. It is further ordered, adjudged and decreed that said Alabama & Georgia Manufacturing Company shall pay, or cause to be paid, said several sums recovered against it in the first paragraph of this

decree, on or before the 1st day of July, 1892, in default whereof the property covered by said trust deed fully set out in the plaintiff's bill, and hereinafter described, shall be sold as hereinafter provided, and all equity of redemption in and to said property and premises, and every part thereof, shall be and the same is hereby barred and forever foreclosed.

3. It is further ordered, adjudged and decreed that if the said Alabama & Georgia Manufacturing Company shall fail to pay or cause to be paid into court said sums as provided in the preceding paragraph, then Alfred E. Buck as marshal of this district shall proceed to sell at public outcry, within the legal hours of holding sheriff's sale on the first Tuesday in September, 1892, before the court-house door in Fulton county, Georgia, to the highest and best bidder after having previously advertised for (30) thirty days in the following named public gazettes published in the city of Atlanta, to-wit, the Atlanta *Constitution* and the Atlanta *Evening Journal*, all and singular the following described real and personal property to wit:

"All of a large island in the Chattahoochee river designated as island number six, containing one hundred and forty-three (143) acres, more or less; also island number nine, containing seven (7) acres, more or less; also a small island between islands numbers nine and six, upon which the east end of the factory building rests, containing four acres more or less; all of the three above described islands being in the twentieth (20) district of Harris county, Georgia; also all that tract or parcel of land, lying on the west side of the Chattahoochee river opposite the above described island, bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sells' corner, thence
161 a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join-, known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, thence a line down said branch to said river, and thence down the western bank of the river to the beginning point, containing sixty-five and twenty-three one hundredths (65.23) acres more or less, lying and being in Chambers county, of the State of Alabama, and being part of section- twenty-eight and twenty-nine (28 & 29), township twenty-one (21), range twenty-nine (29), as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements including the cotton mill, and all the machinery therein, or thereto belonging, and all water privileges and riparian rights, now (or hereafter) owned and enjoyed by the said Alabama & Georgia factory."

4. It— further ordered, adjudged and decreed that said commissioner shall require a cash payment from the highest and best bidder at the sale at the time said property is knocked down to said bidder, of ten thousand ($10,000) dollars. Any balance on the bid that may

be due after paying said sum of $10,000 may be paid in said first mortgage bonds or second mortgage bonds as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution; said bonds to be delivered into court for credit or cancellation, according as they may be paid in part or wholly. Said balance, must be paid in ten days after the sale.

5. Said marshal shall report said highest bid and payments of cash and of bonds, if any is paid in bonds, back to this court, and on confirmation of such sale and the payment of the balance as herein allowed or in cash, said marshal shall execute good and sufficient conveyance of the title of the said property to such purchaser.

6. It is further ordered, adjudged and decreed that the defendants, The Alabama & Georgia Manufacturing Company and The Huguley Manufacturing Company, shall surrender to the purchaser the mortgaged property sold and conveyed, upon the execution, approval and delivery of the marshal's deed thereto; and, as
162 further assurance, shall, on the approval and delivery of said marshal's deed convey their title to all the property therein described to said purchaser, and deliver up all the prior deeds to the same in their possession.

7. It is further ordered, adjudged and decreed that at said sale the one hundred second mortgage bonds issued by the Huguley Manufacturing Company to the St. Louis Trust Company as trustee, or any part of them issued under said second mortgage to St. Louis Trust Company as trustee, shall be accepted as payment on account of purchase as to any excess over the amount of said first mortgage bonds of said Alabama & Georgia Manufacturing Company and their interest and the costs of suit.

This shall not interfere with the requirements to pay said $10,000 in cash however. Should there remain still a balance in the hands of the said marshal after the payment first of all sums due on said first mortgage bonds, principal, interest and costs as aforesaid, and after paying to said The St. Louis Trust Company as trustee the said second mortgage bonds, principal and interest, which are hereby ordered to be so paid, as being a second lien on said property—said balance shall be paid to said Huguley Manufacturing Company or its attorney of record.

8. All questions relating to the compensation of the master, marshal for sale and complainant's solicitors out of the fund brought into court, are reserved for determination on distribution thereof.

9. Either party may except to this decree or to any part thereof.

In open court this 30th day of May 1892.

WM. T. NEWMAN,
U. S. Judge.

Now at the signing of this decree and before and when it is signed come said defendants and except to this said decree on the ground that under the pleadings and evidence *in* the decree is wrong, the

bonds of Ala. and Ga. Mfg. Co., not being due as alleged by pl'ff-trustee and for other reasons apparent on the record.

This 30, May, 1892.

N. J. & T. A. HAMMOND.

163 Noted and ordered filed May 30, '92.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 May, 1892.

O. C. FULLER, *Clerk.*

Order Noting Exceptions of Defendants.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GA. MFG. CO. ET AL. } Final Decree, May 30, 1892.

And now comes the plaintiff by his solicitors and on the rendition of said decree and before the filing of same prays leave to except to the same within fifteen days from date hereof and that said exception be noted by the court and ordered filed.

This 30 May, 1892.

WM. T. NEWMAN,
U. S. Judge.

The like privileges as above granted to the defendants.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 day of May, 1892.

O. C. FULLER, *Clerk.*

Opinion of the Court.

In the Circuit Court of the United States, Northern District of Georgia. In Equity.

Bill to foreclose mortgage.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL.

On the 1st day of January, 1884, the Alabama & Georgia Manufacturing Company issued $65,000 of bonds in the denomination of $500 each payable to bearer with eight per cent. interest
164 thereon; interest payable by semi-annual coupons attached to each bond. On the same day the company executed a

mortgage or deed of trust to J. J. Robinson, W. C. Yancey and W. T. Huguley as trustees, covering the property of the company for the purpose of securing said issue of bonds. The language of the trust deed so far as it is necessary to quote from the same, is in these words: "To provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguley, or a majority of them, or their survivors and successors, are hereby authorized and empowered should default be made in the payment of said bonds when they fall due, or in the payment of the interest on said bonds as it shall accrue, then immediately on such default being made known by the holder or holders of said bonds, the holder or holders of said coupons attached thereto, and if after notice is served upon the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment of said interest or principal, as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama & Georgia Manufacturing Company, upon giving sixty days' notice of the time and place of sale together with the description of the property in a newspaper published in the cities of Atlanta, Lagrange and West Point, Georgia, to proceed to sell at public auction at the office of said company in the city of West Point, Georgia, for cash, the property herein conveyed or a sufficient amount of the same to pay the amount due and apply the proceeds of the sale, etc." The bonds were disposed of and the trust deed delivered and duly recorded. In the year 1888, a bill in equity was filed in the State courts by other creditors, and a receiver appointed for the factory property named, who, after holding the same for a short time, sold the property by order of the court, the sale being made subject to the bonds and mortgages before alluded to. The purchasers at this sale afterwards organized themselves into what was known as the Huguley Manufacturing Company. On the 21st day of January, 1891, J J
165 Robinson filed a bill in this court against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T. Huguley. W. C. Yancey was dead at the time the bill was filed and W. T. Huguley was interested in the Huguley Manufacturing Co. and his interest being adverse to the trustees Robinson brought the suit alone. This proceeding by Robinson alone was sustained by this court in a decision rendered on demurrer to the bill at the spring term, 1891, with Mr. Justice Lamar and the present presiding judge on the bench.

The ground for foreclosure of this trust deed as set out — the bill is the non-payment of the coupons maturing July 1st, 1890, and continued default for six months thereafter. The language used in each of the bonds so far as is material to this question is as follows: The Alabama & Georgia Manufacturing Company hereby acknowledges itself indebted for value received to the bearer hereof in the sum of

five hundred dollars in lawful money of the United States to be paid at the office of the company in West Point, Georgia, on the first day of January, 1904, with interest at the rate of eight per cent. per annum, payable on the first day of January and the first day of July of each year until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due. And it is hereby expressly agreed by said company, with each and any holder of this bond, that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectable."

The defence to this proceeding is, that there was not such default in the payment of the July, 1890, coupons as authorizes a decree of foreclosure. It is not questioned that the Huguley Manufacturing Company, the present owner of the property, has the same right to six months after failure to pay coupons at maturity, that the Alabama & Georgia Manufacturing Company would have had, before suit could be commenced to foreclose for the principal of the debt and accrued interest. It appears that as to two or three series of coupons maturing prior to the July, 1900, series, advantage
166 had been taken of almost the whole, and certainly of the larger part of the six months allowed by the contract within which to pay; even during the time that the property was in the hands of the receiver of the State court this seemed to have been the case. The bonds and also the coupons were made payable on their face at the office of the company at West Point, Georgia. In July, 1890, it is conceded that neither the Alabama & Georgia Co., or the Huguley Manufacturing Co., the present owners of the property, had an office in West Point. It appears that the coupons paid by the recent owners of the property since its ownership, were paid with money deposited by the officers of the company in the Atlanta national bank at Atlanta, Georgia, but actual payment of the greater part was at West Point, Ga., and through L. Lanier & Co., who are bankers at that place. On the 1st of July, 1890, no money was provided at either of the banking establishments or elsewhere, as far as the proof shows, for the payment of the coupons maturing at that time. Present-ions of the coupons and request for payment a that time clearly would have been fruitless. The facts relied on to relieve defendants of default in the payment of the coupons — as follows: The treasurer, who resides in St. Louis, Mo., by direction of the president, who resides at the same place, on the 29th of December, 1890, mailed in the post office at St. Louis, a letter enclosing a draft for $2,678.00 to the Atlanta National Bank of Atlanta, Ga., and enclosing a letter asking that the same be used in the payment of these coupons and he also mailed at the same time to the Atlanta *Constitution*, a newspaper published in Atlanta, Ga., a letter enclosing an advertisement to be inserted in that paper informing all the holders of the July, 1890, coupons that the same would be paid on presentation at the Atlanta national bank. It appears from the

evidence that a letter mailed in St. Louis on the 29th, of December in time to catch an evening mail, as this letter was would reach Atlanta in due course on the evening of the 30th inst., and should be in the office of any business establishment in Atlanta, on the morning of the 31st at least, the evidence of the officers of the bank is that the letter was not opened in the bank and the remittance was not entered on its books until January 2d. The fact that January first was a legal holiday
167 *day*, and the banks were closed on that day and no business of any kind transacted, accounts for that day's delay, but the fact that the remittance was not received on the 31st of December is not accounted for except by delay in transmission. The evidence as to when the Atlanta *Constitution* received its letter is somewhat indefinite, but the advertisement was not entered on the books until the first, and the advertisement appeared in the paper the morning of the second. On the 2d of January the cashier of the Atlanta national bank telegraphed to L. Lanier & Co. at West Point, authorizing them to pay January, 1890, coupons of this company, and ascertaining his error as to the series of coupons to which the money deposited was to be applied, he, on the next day, the third, telegraphed L. Lanier & Co. to pay July, 1890, coupons. There was considerable evidence pro and con upon each matter connected with this last transaction. L. Lanier, of the West Point banking firm, owned or controlled $35,000 of the bonds and the coupons thereon, and he declined to receive the money for his coupons, as did nearly all the holders of the same, and Robinson, as trustee, was requested by holders of $50,000 of bond- to commence foreclosure proceedings, having notice that said holders of bonds elected to treat the entire debt a- due. As has been before stated, on the 21st of January, 1891, this bill was filed. The answer sets up the defence as before stated, and the case is now heard for a final decree.

It is claimed—

1. By the defendants that the resolution of the stockholders authorizing the issuance of these bonds gave no authority to the officers of the company to insert in the bonds the provision for the entire debt to become due on default in payment of semi-annual interest. The contention is, that such provision must be specially authorized to justify its insertion in the bonds and mortgage. Reliance on this point is placed mainly on the case of Jessup v. City Bank of Racine, 14 Wisconsin, 331, where the ruling of the court was to that effect. Also Jones on Mortgages, sec. 76, 1182. The ground for the Wisconsin case referred to seems to be that the provision for non-
168 payment of interest authorizing the creditor to treat the whole debt as due and recoverable, is such an unusual one that it will not be presumed to have — included in the general authority to issue bonds and execute a mortgage. If this be the reason, the ruling now should be otherwise, for it is a matter of common knowledge that these provisions are almost universally inserted, and have been for several years, in all securities of this kind. But

even if this be a valid objection when properly made, and it is not so considered, can the Huguley Manufacturing Company insist upon it, or set it up as a defence in this suit? Very clearly not. They purchase the property covered by the mortgage, subject to the mortgage and the debt which it secures. The fact of the existence of this mortgage as a valid subsisting lien, and for the amount expressed therein, was evidently considered in fixing the price to be paid by the Huguley Manufacturing Company for the property. By purchasing this property subject to this debt and thereby having the price reduced to that extent, they are clearly estopped from subsequently setting up the invalidity of the instrument securing the debt and from contesting terms. They thereby assumed the mortgage in its entirety. As to whether or not the officers of the Alabama & Georgia Manufacturing Company exceeded the powers given them in the resolution of the stockholders, was a matter in which the stockholders of the company alone were interested, and they have ceased to have interest therein by the sale of the property and its purchase by the Huguley Company. Without referring to other authorities it is sufficient to cite the case of Bronson *v.* Lacross Railroad Company, 2 Wallace 283. In the opinion in that case,—page 311, this language is used: "And especially, what right have the Milwaukee and Minnesota Company to complain, who purchased the equity of redemption through Barnes their agent, subject to the previous encumbrances of $1,000,000. They have the benefit of that incumbrance by an abatement of that amount in the price of the purchase." The position of defendant on this question cannot be sustained.

2. It is insisted in the next place that the Huguley Manufacturing Company was entitled to the three days of grace allowed on commercial paper in the payment of these coupons, and that con-
169 sequently the six months allowed for payment by the contract, commenced to run on the fourth day of July, or as the fourth day of July was a legal holiday in Georgia, not earlier than the third. Not considering for the moment the rule in Georgia, there is authority in favor of the view that the coupons attached to bonds like these are entitled to three days of grace it seems to be so held in New York. See Cooper *v.* Town of Thompson, 13 Blatchford; Evertson *v.* National Bank of New York, 13 Albany Law Journal, 350. But there is conflicting authority on this question. McLoon *v.* Smith 49 Wis. 200; National Bank of North America *v.* Kirby, 108 Mass. 497; Chafee *v.* Railroad Company, 146 Mass. 224. So it can hardly be said that there is such a general and uniform rule of commercial law in favor of the allowance of days of grace on coupons, such as these, as would justify the court in ignoring the established rule in the State of Georgia, where this transaction occurred. These bonds were issued in Georgia and payable in the same State, and the property on which the lien was given to secure them is in Georgia, and if there is a well established rule in the State on this subject it should control. Section 2784, Code of Georgia,

is as follows: "The three days generally known as 'days of grace' and by custom allowed on papers payable at banks or broker's office, shall not be allowed on any bill or draft payable at sight." In the case of The Dalton City Company *v.* Haddock, 54, Ga. 584, the rule is stated in the syllabus in these words: "Days of grace are not allowed in Georgia on promissory notes not payable at a bank or brokers' office." Whether this decision is a construction of the statute, does not satisfactorily appear, and at the most, if drawn from the statute, it is only inferential, still it is very clearly stated to be the rule of Georgia on the subject. This court will follow that rule unless it contravenes the generally accepted rule of commercial law on the subject. The authorities do not justify the court in saying there is such a uniform rule outside of Georgia, as would justify the court in adopting it, instead of the law as held in Georgia. These coupons became due therefore on the first day — July, and the six months within which the same could be paid to prevent suit commenced to run with that day.

170 3. It is an accepted fact in this case that there was no money provided either at the Atlanta national bank in Atlanta, or at any office in West Point to pay these coupons on the first day of July. This being true, it is clear under the authorities on that subject that no demand need be averred or proved. If the facts show that demand would have been unavailing if made, it is not required. See Shaw *v.* Bill 95 U. S. 10–14; Rising Fawn Iron Company *v.* Warner, 3 Wood, 525.

4. When this case was before the court on demurrer to the bill at a former term, it was held that the language of the trust deed as to notice to the president, etc. was only applicable in the event of a proceeding on the part of the trustees to sell the property summarily on 60 days' notice, and need not be averred where proceeding was instituted to foreclose.

5. It is conceded that time is of the essence of this contract, and there must have been payment, or a deposit of money at a proper place to pay these coupons within six months from their maturity. I think it may be conceded that it was the intention of the officers of the Huguley Company to get this money where it could be paid to the holders of the July coupons before the expiration of the six months from July 1st, but their delay in not starting the money from St. Louis until the evening of the 29th of December, as well as the *the* notice to the coupon holders which was to be inserted in the Atlanta *Constitution*, certainly does not show any great diligence on their part. Very slight delay or irregularity in the mails would be sufficient to prevent either the notice or the money reaching their destination in time to accomplish the purpose of the sender. However, it is a fact that no money was placed by the Huguley Company in the Atlanta national bank to pay these coupons until the second of January, and no authority was given the bank at West Point to pay the July coupons until the third. Now it is not altogether certain that the six months allowed by this contract did not

expire with the 31st of December, but even if it be held to have included the first of January, these coupons were not paid on that day and no effort made to pay them on that day. It could hardly be held
171 that the fact that it was a legal holiday would give another day, and if that would have any effect at all, it would seem to require the money should be at a proper place on the preceding day to pay these coupons. Now the position assumed for the defendant seems to be that some diligence was required on the part of the holders of these coupons to ascertain if the money was at any place where they might reasonably expect it to be, and that it was their duty to some extent to apply for the money. No such diligence or effort on the part of the coupon holders is justified under a proper view of this contract. As affecting the duty of the coupon holders at the time of the original maturity of the coupons, such a rule might very properly be invoked: and if the proof had shown that the money was at any place to pay these coupons when they became due where the holders might reasonably expect to have received it, that would unquestionably be sufficient to defeat any proceeding to foreclose. But after failure to provide funds to pay coupons at the time of maturity, then it would seem to be the duty of the Huguley Company to use diligence on their part to get the money within the six months into the hands of the coupon holders. It is not necessary to go to the extent contended for here that the company must hunt them up and seek them out, but it certainly is true that they the Huguley Company, must have used diligence to provide this money at such place within the six months, and that such notice thereof be given to holders of the coupons as a fair degree of diligence on their part would require. The duty of the holders of the coupons so far as the exercise of any diligence on their part was concerned, was ended with the failure to pay at the original maturity, and thereafter the burden as to diligence was changed and was on the officers of the Huguley Company. Even if the money to pay these coupons had been in the Atlanta national bank on the 31st of December, it is not satisfactorily shown that the bondholders were put on such notice actual, or by previous payment there, as would cause them to look to this bank as the place of payment of the coupons. There is not enough in the evidence to show that they could have fairly expected their coupons to be paid if they had sent them
172 there, and it is entirely clear from the evidence that no money was available even at that bank to pay them until the second of January. Now if it be true that it was the duty of the bondholders to have their coupons where there was at most only a probability of their being paid, on or about the last day allowedfor payment, and the court is not prepared to so hold even then, they would not have received their money on their coupons until the second of January.

6. If a court of equity would in any case relax the strict rule which must necessarily obtain in a case like this, where time is of the essence of the contract it would be where a more favorable show-

ing is made for the defendants than has been brought out by the evidence here. The property was purchased by the Huguley Company in January 1890, and the January 1890 coupons which it is assumed in the purchase, were not paid until June 1890, and as has been stated, the beginning of the effort to pay July coupons was by starting the money from St. Louis on the 29th of December.

The failure to pay these coupons at maturity must necessarily have an unfavorable effect on the value of the bonds and it is not unreasonable that the holders of the bonds would ask a strict construction of their contract. Notwithstanding the very forcible and able presentation of this case for defendant, the court is unable to see any sufficient reason to justify it in declining to allow a foreclosure of this mortgage as prayed for.

The conclusion is, that the complainants are entitled to a decree of foreclosure in accordance with the prayer in their bill.

WILLIAM T. NEWMAN,
United States Judge.

Filed in clerk's office 23 day of March 1892.

O. C. FULLER, *Clerk.*

Petition for Appeal and Order Allowing Same.

Bill to foreclose mortgage.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, Plaintiff,
vs.
ALABAMA & GEORGIA MFG. CO. and HUGULEY MFG. CO., Defendant- and Appellants.

173 The above named defendants, The Alabama & Georgia Manufacturing Company and The Huguley Manufacturing Company, conceiving themselves aggrieved by the decree foreclosing said mortgage entered on the 30th day of May, 1892, in the above proceeding, do hereby appeal from said decree to the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana, and pray that this their appeal may be allowed, and that a transcript of the record and proceeding- and papers upon which said decree was made, duly authenticated, may be sent to the said United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana.

N. J. & T. A. HAMMOND,
Sols. for Appellants.

U. S. Circuit Court, Northern District of Georgia.

Now, to wit on the 28th day of July, 1892, it is ordered that the appeal be allowed as prayed for.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 28th day of July, 1892.

O. C. FULLER, *Clerk.*

Citation.

UNITED STATES OF AMERICA:

The President of the United States to J. J. Robinson trustee, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Georgia, wherein you as trustee are plaintiff and The Alabama & Georgia Manufacturing Company and The Huguley Manufacturing Company defendants are appellants, to show cause, if any there be, why the decree rendered against the said appellants as in said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

This the 28th day of July, 1892.

WM. T. NEWMAN,
U. S. Judge.

174 Due and legal service of this citation acknowledged and copy waived.

This July 28, 1892.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH, *Sols. for Pl'ff.*

Filed in clerk's office 28 day of July, 1892.

O. C. FULLER, *Clerk.*

Order as to Supersedeas Bond.

Bill.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY.

It being represented to the court now in session that the defendant in said cause intend- to appeal said case, it is ordered that when said appeal shall be applied for and a bond shall be given in the terms of the law in such cases provided, in the sum of ten thousand dollars ($10,000), the judgment of this court in said cause shall be superseded until the return of the remittitur from the appellate court. July 4, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 4th day of July, 1892.

O. C. FULLER, *Clerk.*

Assignment of Error.

Bill for foreclosure of mortgage.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, Pl'ff,
versus
THE ALA. & GA. MFG. CO. and HUGULEY MFG. CO., Def'ts and App'ts.

Now comes the said Alabama & Georgia Manufacturing Company and the said Huguley Manufacturing Company, who appeal
175 from the decree of foreclosure in said cause, and with their said appeal file the following assignment of error:

1st. That the court erred in overruling the demurrer to the bill of the said J. J. Robinson filed in said cause. Said demurrer should have been sustained, upon each and every of the grounds therein mentioned.

2d. That the court erred in granting the final decree foreclosing the mortgage against the said property of the Alabama & Georgia

Mnfg. Co., specified therein, because under the evidence there was no such default as would justify such foreclosure.

3d. That the court erred in holding that there was in July, 1890, no office of the Alabama & Georgia Mnfg. Co., at West Point, Ga., to which holders of bonds should have made application for payment thereof. Appellants claim that the evidence shows that there was such office there at that time.

4. That the court erred in holding that the actual payment of the coupons mentioned in his opinion had been made at West Point, Ga., through W. C. & L. Lanier, bankers at that place, because the evidence shows that the payments there mentioned were actually made at the Atlanta national bank, and that W. C. & L. Lanier simply took up the coupons, as any other person might have purchased them, and forwarded the same to the Atlanta national bank for payment.

5th. The court erred in holding that the resolution of the stockholders authorizing the issuance of the bonds gave authority to the officers of the company to insert in the bonds the provision for the entire debt to become due on default in the payment of the semi-annual interest, such provision not being specifically made in the resolution.

6th. The court erred in holding that the Huguley Manufacturing Co. was under the evidence in the case estopped from subsequently setting up that objection to the bonds in this contest, and further, in making that objection the objection of the Huguley Mnfg. Co. only, where it was equally insisted upon in favor of the Alabama & Georgia Mfg. Co., defendant.

7th. The court erred in holding that days of grace were not to be allowed on the coupons to said bonds, and that therefore
176 the coupons fell due on the 1st day of July, and that the six months within which the same could be paid to prevent this suit began on that day, instead of the 3d day of July, as appellants claim.

8th. The court erred in holding that under the evidence the bondholders had not accepted the Atlanta national bank as the place at which they must ask for the payment of their coupons, and further, in holding that no money was placed in said Atlanta national bank to pay these coupons until the 2d day of January, the evidence showing, as appellants contend, that the Atlanta national bank had been by consent of all parties made the place of payment after the sale of the Alabama & Georgia Mfg. Co.'s property, and the evidence also showing, as they contend, that the money to make the payment in question was in said Atlanta national bank on the first day of January, instead of not until the second as the court held.

N. J. & T. A. HAMMOND,
Sols. for Appellants.

Let this assignment of errors be filed with the appeal above allowed.

This 28 July, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 28 day of July, 1892.

O. C. FULLER, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Georgia, } ss:

I, O. C. Fuller, clerk of the United States circuit court, in and for the northern district of Georgia, do hereby certify that the following and attached printing and writing is a true, full, correct and complete copy of the original decree on file, and remaining of record in my office in the matter of J. J. Robinson trustee *vs.* The Alabama & Georgia Manufacturing Company *et al.*

In testimony whereof, I hereunto set my hand and seal of the said circuit court, at Atlanta, Ga., this the 27th day of July A. D., 1892.

[SEAL.]

O. C. FULLER, *Clerk,*
By GEO. S. BARNARD, *Deputy Clerk.*

177 *Master's Report of Sale.*

In the Circuit Court of the United States for the Northern District of Georgia, March Term, 1891.

J. J. ROBINSON, T-ustee,
vs.
THE ALABAMA & GEORGIA MFG. CO. ET AL. } No. 360. In Equity.

This cause came on to be heard at the present term, and was argued by counsel, and upon consideration thereof it is ordered, adjudged and decreed as follows:

1. That the plaintiff, J. J. Robinson, as trustee for the holders of the bonds and coupons of The Alabama & Georgia Manufacturing Company, one of the defendants herein, do recover of and from said Alabama & Georgia Manufacturing Company, the sum of sixty-five thousand ($65,000.00) dollars principal, due on one hundred and thirty bonds of said company, secured by deed of trust covering the property hereinafter described, and the sum of — dollars due on the unpaid coupons on said bonds, and the sum of — dollars interest due on said coupons, said amounts to be ascertained by the special master to be hereafter provided for, and the further sum of — dollars as costs, said costs to include one hundred and twenty dollars, to be paid to counsel for commissioner's fees for taking testimony, in lieu of statutory commissioner's fees.

2. It is further ordered, adjudged and decreed that said Alabama & Georgia Manufacturing Company shall pay or cause to be paid said several sums recovered against it in the first paragraph of this decree, on or before the 1st day of July, 1892; in default thereof the property covered by said trust deed fully set out in plaintiff's bill and hereinafter described shall be sold as hereinafter provided, and all equity of redemption in and to said property and premises, and every part thereof, shall be and the same is hereby barred and forever foreclosed.

3. It is further ordered, adjudged and decreed that if the said Alabama & Georgia Manufacturing Company shall fail to pay or cause to be paid into court said sums as provided in the preceding paragraph, then Alfred E. Buck, as marshal of this district,
178 shall proceed to sell at public outcry, within the legal hours of holding sheriff's sales on the first Tuesday in September, 1892, before the court house door in Fulton county, Georgia, to the highest and best bidder, after having previously advertised for 30 days in the following named public gazettes published in the city of Atlanta, to-wit: the Atlanta Constitution and the Atlanta Evening Journal, all and singular the following described real and personal property, to-wit:

"All of a large island in the Chattahoochee river designated as Island Number Six, containing one hundred and forty-three (143) acres, more or less; also Island Number Nine, containing seven (7) acres, more or less; also a small island between Islands Numbers Nine and Six upon which the east end of the factory building rests, containing four acres more or less; all of the three above described islands being in the twentieth (20) district of Harris county, Georgia; also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by said river beginning at a point on the west bank of the river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sell's corner, thence a straight line to a point where the land- owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in a line down said line down said branch to said river, and thence down the western bank of the river to the beginning point, containing sixty-five and twenty-three one hundredths (65.23) acres more or less, lying and being in Chambers county of the State of Alabama, and being part of section- twenty-eight and twenty-nine (28 & 29), township twenty-one (21), range twenty-nine (29), as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein, or thereto belonging, and all water privileges and riparian rights, now (or hereafter) owned and enjoyed by the said Alabama & Georgia factory."

4. It is further ordered, adjudged and decreed that said
179 commissioner shall require a cash payment from the highest and best bidder at the sale at the time said property is knocked down to said bidder, of ten thousand ($10,000) dollars. Any balance on the bid that may be due after paying said sum of $10,000 may be paid in said first mortgage bonds or second mortgage bonds as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale of distribution: said bonds to be delivered into the court for credit or cancellation, according as they may be paid in part or wholly. Said balance must be paid in ten days after the sale.

5. Said marshal shall report said highest bid and payments of cash and of bonds, if any is paid in bonds, back to this court, and on confirmation of such sale and the payment of the balance as herein allowed or in cash, said marshal shall execute good and sufficient conveyance of the title of the said property to such purchaser.

6. It is further ordered, adjudged and decreed that the said defendants, The Alabama & Georgia Manufacturing Company, and The Huguley Manufacturing Company, shall surrender to the purchaser the mortgaged property sold and conveyed, upon the execution, approval and delivery of the marshal's deed thereto and, as further assurance, shall, on the approval and delivery of said marshal's deed convey their title to all the property therein described to said purchaser, and deliver up all the prior deeds to the same in their possession.

7. It is further ordered, adjudged and decreed that at said sale the one hundred second mortgage bonds issued by the Huguley Manufacturing Company to the St. Louis Trust Company as trustee, or any part of them issued under said second mortgage to said St. Louis Trust Company as trustee, shall be accepted as payment on account of purchase as to any excess over the amount of said first mortgage bonds of said Alabama & Georgia Manufacturing Company and their interest and the cost of suit. This shall not interfere with the requirement to pay said $10,000.00 in cash however. Should there remain still a balance in the hands of the said marshal after the payment first of all sums due on said first mortgage bonds, principal, interest and costs as aforesaid, and after the paying the said The St.
Louis Trust Company, as trustee, the said second mortgage
180 bonds, principal and interest which are hereby ordered to be so paid as being a second lien on said property, said balance shall be paid to said Huguley Manufacturing Company or its attorney of record.

8. All questions relating to compensation of the master marshal for sale, and complainant's solicitors out of the fund brought into court, are reserved for determination on distribution thereof.

9. Either party may except to this decree or to any part thereof.

In open court this 30 day of May, 1892.

WM. T. NEWMAN,
U. S. Judge.

Now at the signing of the decree and before whom it is signed come said defendants and except to the said decree on the ground that under the pleadings and evidence in the cause the decree is wrong, the bonds of Ala. & Ga. Mfg. Co. not being due as alleged by pl'ff- trustee and for other reasons apparent on the record.

This 30 May, 1892.

N. J. & T. A. HAMMOND.

Noted and ordered filed May 30, '92.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 30 day of May, 1892.

O. C. FULLER, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Georgia.

The United States Circuit Court.

The President of the United States to the marshal of the northern district of Georgia, Greeting:

It is hereby commanded, that of the following described property, situated, lying and being in Harris county State of Georgia, and Chambers county, State of Alabama, to wit: "All of a large island in the Chattahoochee river, designated as Island Number Six, containing 143 acres more or less; also Island Number 9 containing 7 acres more or less; also a small island between Islands Number- 9 and 6, upon which the east end of the factory building rests,
181 containing 4 acres more or less; all of the three above described islands being in the 20 district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sells corner, thence a straight point where the land- owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in line down said branch to said river, and thence down the western bank of the river to the beginning point containing sixty-five and 23-100 (65.23) acres more or less lying and being in Chambers county, of the State of Alabama, and being part of section- 28 and 29 township 21 range 29 as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it including all tenements and improvements,

including the cotton mill and all the machinery thereon or thereunto belonging and all water privileges and riparian rights now (or hereafter) owned and enjoyed by the said Alabama & Georgia factory you cause to be made the sum of sixty-five thousand dollars principal debt which J. J. Robinson, trustee, lately, to wit: on the 30th day of May, 1892, in the circuit court of the United States for the northern district of Georgia, recovered against the Alabama & Georgia Manufacturing Company for his damages which he had sustained on the occasion of the not performing certain promises and undertakings then lately made by the said Alabama & Georgia Manufacturing Company to the said J. J. Robinson, trustee, and also the sum of fifty-seven and 50-100 dollars for attorney's fees, which in the said court were adjudged to the said J. J. Robinson, trustee, and also the sum of one hundred eighty-seven and 05-100 dollars for his costs and charges by him about his suit in that behalf expended, whereof the said Alabama & Georgia Manufacturing Company were convicted as appears of record; and have you the
182 money before the judges of said court, in the term of the first Monday of October, 1892, to render to the said J. J. Robinson, trustee, for his damages, costs and charges aforesaid, together with this writ.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, this 27 day of July, in the year of our Lord, one thousand, eight hundred and ninety-two.

O. C. FULLER, *Clerk.*

No. 360. In the circuit court of the United States for the northern district of Georgia. To October term, 1892. J. J. Robinson, trustee *versus fieri facias* Alabama & Georgia Manufacturing Company. Issued July 27, 1892. Date of judgment, May 30, 1892.

Principal		$65,000 00
Costs—Clerk		67 05
" "		97 75
" Attorney		57 50
" Comm'r		120 00
" *Fi. fa.* and copy decree		3 00

B. F. & C. A. ABBOTT,
Plaintiff's Attorney.

Master's (Marshal) Report.

In Circuit Court United States, Northern District Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MANUFACTURING COMPANY.

To the honorable the judges of said court:

A. E. Buck, as marshal of the northern district of Georgia, now comes and reports to the court that in accordance with the decree of the court he exposed the property embraced in the above decree, to sale at public outcry on the first Tuesday in September, 1892, when the same was knocked off to L. Lanier, A. T. Dallis and T. J. Kirby at the sum of 66,000 dollars, the same being the highest bid. Said parties paid him the sum of 10,000 in cash which sum he
183 now has subject to the order of the court for such order and direction as may be given in the matter.

A. E. BUCK,
U. S. Marshal, Nor. Dist. Ga.

This 15 September, 1892.

Filing.—Filed in clerk's office Sept. 15, 1892.

O. C. FULLER, *Clerk.*

Petition of L. Lanier et al. for Decree of Confirmation.

Decree of foreclosure.

In Circuit Court U. States, N. District Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MFG. CO. ET AL.

To the Honorable W. T. Newman, judge, &c.:

The petition of L. Lanier, A. T. Dallis and T. J. Kirby shows that they representing all the bondholders of said company *they* purchased the property embraced in said decree on the first Tuesday in September, 1892, at public outcry at and for the sum of $66,000 sixty-six thousand dollars, they being the highest and best bidders. In said purchase they acted as agents for all the bond holders except the owners of 7,000 dollars principal and interest. They paid 10,000 dollars cash on the spot.

Under the decree "any balance due on the purchase may be in the bonds of the company as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution, the bonds to be delivered into court for credit or collection according as they may be paid in part or wholly."

Your petitioners have said bonds represented by them as agents of the purchasers and as their own aggregating 58,000 dollars and interest ready to pay in on said purchase according to said decree and will have the account stated by consent of the holders of said 7,000 dollars of bonds not interested in the purchase when the court is ready to pass on the question of confirming the sale.

The expenses have not been agreed on in fact, that is the master's compensation, the marshal's compensation and perhaps some other items of cost.

Your petitioners now come and ask that the sale be confirmed and said items of cost be fixed and that the court will pass on the same on the 15th inst. at 10 o'clock a. m., and that the court
184 pass such other order in the premises as may be proper.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sols. for Compl'ts and Petitioners.

It is ordered that the solicitor for defendants and the holder of said bonds mentioned in this petition be served and that they show cause before me in the 15th inst. at 10 o'clock a. m. why the prayer of this petitioner should not be granted.

This Sept. 14, 1892.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service — this petition acknowledged copy waived. Sept. 14, 1892.

N. J. & T. A. HAMMOND,
Att'y- for Mrs. S. Huguley, Holding $60,000 of Bonds, and Defendants as Aforesaid.

Filed in clerk's office 14 day of Sept. 1892.

O. C. FULLER, *Clerk.*

Decree Confirming Sale.

Decree of foreclosure.

In Circuit Court of U. S., Nor. Dist. Ga.

J. J. ROBINSON, T-ustee,
vs.
THE ALABAMA & GEORGIA MFG. CO. ET AL.

The report of A. E. Buck as commissioner to make sale of the property having been filed in the office of the clerk of this court in the above stated matter, showing that he exposed the property embraced in the decree to sale at public outcry at the time and place specified in the decree and that the provisions and directions of said decree were in all respects complied with and that the property was knocked down to L. Lanier, A. T. Dallis and T. J. Kirby at and for the sum of sixty-six thousand dollars ($66,000.00) they being the highest and best bidders.

185 It is now considered ordered and allowed that said sale be and the same is hereby confirmed in all respects, and that said A. E. Buck as the commissioner of this court be and he is hereby authorized and directed to convey, to said purchasers named, all and singular the property and the property rights of every description described in said decree, upon said purchasers complying with the terms of said decree.

It is further ordered and decreed that the compensation of the solicitors for the plaintiff, to wit: Abbott & Smith, Dorsey, Brewster & Howell and N. D. Denson, for conducting the litigation on part of the plaintiff and for bringing the fund into the court, be and the same is hereby fixed at twenty-six hundred dollars, and that the compensation of J. J. Robinson, trustee, plaintiff in this case be fixed at five hundred dollars.

It is further ordered and decreed that all bonds not represented by said purchasers shall be, by said Buck commissioner, paid to the holders thereof on presentation, to the extent that such bonds and coupons would be entitled to share in the net proceeds of the sale of said property.

The said Buck will pay the clerk's bill of cost and other costs taxable by law—that is the costs in the main case above stated proper, except the item of commissions for one hundred and twenty dollars, shall be paid to N. J. & T. A. Hammond, solicitors, same being paid out for taking interrogatories. He will also pay said J. J. Robinson his compensation as fixed above and Abbott & Smith one thousand dollars, to Dorsey, Brewster & Howell one thousand dollars and to N. D. Denson six hundred dollars, being in the aggregate the sum of twenty-six hundred dollars solicitors' fees taxed.

The said Buck is authorized to retain out of the proceeds of said sale his own compensation as fixed by order of the court in this cause to-wit, four hundred dollars, also the sum of two hundred and fifty-two dollars $252,00 for advertising said property in the Journal and Constitution newspapers and he will pay the last two sums.

In open court this September 16th, 1892.

WILLIAM T. NEWMAN,
United States Judge.

186 Filed in clerk's office 16 day of Sept., 1892.

O. C. FULLER, *Clerk.*

Order Fixing Compensation of Commissioner.

Decree of foreclosure.

In Circuit Court U. S., Northern District Georgia.

J. J. ROBINSON, Trustee,
vs.
THE ALABAMA & GA. MFG. CO. ET AL.

It being made to appear to the court by the report of A. E. Buck, who was appointed by the decree of the court in the above stated matter, to make sale of the property embraced in said decree, that he exposed the property at public outcry at the time and place named in the decree, and that the property was knocked down to L. Lanier, A. T. Dallas and T. J. Kirby at the sum of 66,000 dollars.

And it appearing also that said Buck advertised and exposed to sale, the property as marshal of said district according to the literal wording of said decree in that respect.

And it being the intention of this court to appoint said Buck as commissioner of this court to make said sale and that it should be made in all respects in conformity with the rule and practice of courts of equity in making sales, and not under the law governing marshal's sales under process issuing out of courts of law and such was the desire and intention of counsel as shown by the decree in reference to the advertisement, confirmation of sale, etc.

And it further appearing that the provisions of said decree as to advertisement, terms, etc., have been fully complied with.

It is therefore considered ordered and decreed that the compensation of said Buck as commissioner, for making said sale, the execution and delivery of the deed to the purchasers and the doing of any and all other acts necessary to complete the sale be and the same is hereby fixed at the sum of four hundred dollars.

It is further ordered that said Buck, as marshal of said dis-
187 trict, under the facts of the case be and he is hereby relieved from embracing his compensation, so awarded him, in his official report as marshal, to the Government.

And it is further ordered and decreed that said decree be so far amended and corrected as to require said Buck to make title to the property as commissioner of this court instead of making the same as marshal.

In open court this 16th Sept., 1892.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 16 day of Sept., 1892.
O. C. FULLER, *Clerk.*

Petition for Appeal.

Bill to foreclose mortgage.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, Plaintiff,
vs.
THE ALABAMA & GEORGIA MANUFACTURING COMPANY, THE Huguley Manufacturing Company, & Wm. T. Huguley, Defendants.

The above named defendants The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company and Wm. T. Huguley, conceiving themselves aggrieved by the decree foreclosing said mortgage, entered on the 30th day of May, 1892, in the above cause, do hereby appeal to the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana. Said defendants (except Wm. T. Huguley) have heretofore prayed an appeal in this cause and for leave to supersede the said decree; which appeal and leave was granted but exigencies having arisen by reason whereof the bond on ten thousand dollars required for a supesedeas was not given and said appeal was abandoned and the clerk was instructed by att'y for said appellants not to send up the record. Said defendants, The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company and Wm. T. Huguley now pray
that an appeal from said decree be allowed, without supersed-
188 ing the same, and on bond with security being given for the costs of appeal in said cause, and said appellants now tender their bond with two good and sufficient securities, and pray that the same be approved and ordered filed.

This 21st day of November, 1892.

JOHN M. CHILTON,
Sol'r for Appellant.

Order Allowing Appeal.

U. S. Circuit Court, Northern District of Georgia.

And now on this the 21st day of November, 1892, it is ordered that the bond tendered for costs of the appeal be and is hereby approved and that the appeal be allowed as prayed for and the clerk send up the entire record to this date.

WM. T. NEWMAN,
U. S. Judge.

Assignment of Errors.

Bill to foreclose mortgage.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, &c., Pl'ff,
vs.
THE ALA. & GA. MFG. CO., THE HUGULEY MFG. CO., & WM. T. Huguley, Def'ts.

Now comes the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and William T. Huguley, who appeal from the decree of foreclosure in said cause, and with their appeal file the following assignment of errors, jointly and severally:

First. The court erred in overruling the demurrers interposed to the bill of complaint of the said J. J. Robinson. Said demurrer should have been sustained, and each and every ground thereof should have been sustained.

189 Second. The court erred in granting the final decree granting the foreclosure of the mortgage against the said property of the Alabama & Georgia Manufacturing Company specified therein, because, under the evidence there was no such default as would justify such foreclosure.

Third. The court erred in holding that there was in July, 1890, no office of the Ala. & Ga. Mfg. Co. at West Point, Georgia, to which holders of bonds should have made application for the payment thereof.

Fourth. The court erred in holding that the actual payment of the coupons mentioned, in the opinion, had been made at West Point, Georgia, through W. C. & L. Lanier, bankers at that place, because the evidence shows that the payment there mentioned, were actually made at the Atlanta national bank and that W. C. & L. Lanier simply took up the coupons and forwarded same to the Atlanta national bank, for payment.

Fifth. The court erred in holding that the resolutions of the stockholders authorizing the issuance of the bonds, gave authority to the officers of the company to insert in the bonds, the provision that the entire debt should fall due upon default continued for six months after demand to pay any installment of interest.

Sixth. The court erred in holding that under the evidence, the Huguley Manufacturing Company was estopped from setting up the objection above set forth in the fifth assignment of error; and further in making that objection, the objection only of the Huguley Manufacturing Company, when it was equally urged in favor of the Ala. & Ga. Mfg. Co.

Seventh. The court erred in holding that the coupons were not entitled to days of grace, and in fixing July 1st as the day on which the six months (which must elapse before the right to foreclose existed) began to run instead of the 3rd day of July, as appellants claim.

8th. The court erred in holding that, under the evidence, the bondholders had not accepted the Atlanta national bank as the place where they must ask for payment of interest on said bonds; and further in holding that no money was placed in said bank to pay said interest until the 2nd day of January, 1891. The evidence showing
(appellants contend) that said bondholders had not accepted
190 said bank as the place of payment, and (as they further contend) the evidence showing that the money to pay said interest was in said bank on the first day of January if not before that time.

9th. The court erred in holding that the non-payment of interest (continuing for six months) authorized a decree foreclosing the mortgage as to the principal of the bonds.

J. M. CHILTON,
Sol'r for Appellants.

Let this assignment of errors be filed with the appeal above allowed.

This 21 day of Nov'r, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office this 21st day of Nov'r, 1892.

O. C. FULLER, *Clerk.*

Appeal Bond.

Know all men by these presents, that we, The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley, as principal, and Allen Fort as sureties, are held and firmly bound unto J. J. Robinson, trustee, in the full and just sum of five hundred dollars to be paid to said J. J. Robinson, trus-

tee, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of November, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, lately at the March term 1892 of the circuit court of the United States for the northern district of Georgia, to-wit, on the 30th day of May, 1892, in a suit depending in said court, between J. J. Robinson, trustee, as complainant and The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley, were defendants, a decree was rendered against the said
The Alabama & Georgia Manufacturing Company, The
191 Huguley Manufacturing Company, W. T. Huguley, and
the said The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley having obtained said decree and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said J. J. Robinson, trustee, having been duly signed by the judge of said court citing and admonishing him to be and appear before the United States circuit court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley, shall prosecute their appeal to effect, and answer all costs of appeal if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

[SEAL.] HUGULEY MANUFACTURING CO.,
[SEAL.] By D. JANNOPOULO, *Pres't.*
THE ALA. & GA. MFG. CO.,
[SEAL.] By W. H. HUGULEY, *President.*
[SEAL.] W. T. HUGULEY.
[SEAL.] ALLEN FORT.

Approved by—
WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 21st day of Nov'r, 1892.
O. C. FULLER, *Clerk.*

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

In person appeared before me Allen Fort, surety on foregoing bond, who being duly sworn, deposes and says that he is worth the sum of five hundred dollars ($500.00) in his own right, over and

above his just debts and liabilities, and exemptions under the homestead and exemption laws of Georgia; that his property consists of real estate which he owns in his own right, free from incumbrance, of the value of five thousand dollars, in the county of
192–196 Sumter, Georgia, and for the purpose of meeting any liability which may be adjudged against him as surety on foregoing bond, he hereby waives for himself and family all homestead and exemption rights under the constitution and laws of the State of Georgia, to the property above described, and all his other property.

ALLEN FORT.

Sworn to and subscribed before me this 11th day of Nov. 1892.

O. C. FULLER,
Clerk U. S. C. C.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to J. J. Robinson, trustee, &c., Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, within 30 days from the date hereof pursuant to an appeal duly taken and allowed and filed in the clerk's office of the circuit court of the United States for the northern district of Georgia wherein The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company and William T. Huguley are appellants and you are defendant on appeal, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Wm. T. Newman, judge of the district court setting in the circuit court of the United States this 21st day of November, in the year of our Lord one thousand eight hundred and ninety-two.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service of this citation acknowledged and copy waived.

This 21 day of Nov. 1892.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Sols. for Pl'ff, J. J. Robinson, Trustee, &c.

Filed in office this 21 day of Nov. 1892.

O. C. FULLER, *Clerk.*

197 *Petition for Restitution, etc.*

In Equity in the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, &c.,
versus
THE ALABAMA & GEORGIA MANUFACTURING CO., THE HUGULEY Manufacturing Co., and William T. Huguley.

To the honorable the circuit court of the United States for the northern district of Georgia, and to the judges and justices thereof:

The Alabama and Georgia Manufacturing Company and The Huguely Manufacturing Company, each a corporation under the laws of the State of Georgia, file this petition, in the above entitled cause, against L. Lanier, A. T. Dallas and J. T. Kirby, who reside in said northern district of Georgia, and The "Galeton Cotton Mills Company," a corporation organized under the laws of the State of Alabama, but having its principal place of business at West Point, in said northern district.

Answer thereupon your petitioners complain and say:

1st. That on the 21st day of January, 1891, J. J. Robinson filed his bill in this court against petitioners and W. T. Huguley, in and by which, he, as trustee, prayed a foreclosure of a certain mortgage therein alleged to have been executed to him and others, as trustees by said Alabama and Georgia Mfg. Company, of date January 2nd, 1884, upon its factory, machinery and lands therein described, to secure an issue of sixty-five thousand dollars in bonds and interest thereon said bonds bearing date on the 7th day of January, 1884, and to run 20 years, and to bear interest at the rate of eight (8) per cent. per annum, payable semi-annually, principal and interest payable at West Point, Georgia.

It was further alleged in said bill, that said Alabama & Georgia Mfg. Company had failed to pay the interests maturing on said bonds July 1st, 1890, or a large part thereof, and that it was
198 one of the terms of each of said bonds that "in case of the non-payment of any interest-coupon hereto attached, if such default shall continue for six months after maturity, and demand of payment, the principal of this bond shall become immediately due and collectible."

It was alleged that said failure to pay had continued for more than six months after demand made, all which will more fully appear from said bill and the exhibits thereto, which are referred to as part of this petition.

2nd. Petitioners aver that they answered said bill, and that upon the issues so made up, testimony was taken. That it was disclosed by the testimony so taken, that holders of some of the said bonds

had accepted, after the first day of January, 1891, the interest due July 1st, 1890, while other holders had not accepted said interest.

3rd. Petitioners aver that, without ordering a reference or ascertaining otherwise the number and amount of bonds on said interest — had been accepted, this court, on the 30th day of May, 1892, rendered a final decree whereby it was adjudged and decreed that said J. J. Robinson, as trustee aforesaid, recover of said Alabama & Georgia Mfg. Co. the sum of sixty-five thousand dollars, said sum being the entire amount of the bonds secured by said mortgage together with accrued interest thereon, and interest on said interest, and costs of suit. It was further adjudged, that unless said sums should be paid by the Alabama & Georgia Manufacturing Company on or before the 1st day of July, 1892, the said mortgaged property, which is fully described in said decree, should be sold by the marshal of said district on the first Tuesday in September, 1892. Said decree also contained directions for putting purchaser in possession on confirmation of the sale, and other directions, all of which will fully appear by the decree itself, to which reference is here made.

4th. Petitioners allege that the required payment was not
199 made by the Alabama & Georgia Mfg. Company and that said mortgaged property was exposed to sale and sold by the United States marshal on the first Tuesday in September, 1892, under said decree.

That said L. Lanier, A. T. Dallas and J. T. Kirby, who were a committee of said bondholders chosen by them for that purpose and who acted in the premises for said bondholders, became the purchasers at the sum of sixty-six thousand dollars.

Petitioners aver that said committee paid down the sum of ten thousand dollars in cash, required by the terms of said decree, which was applied in part, to counsel fees for the solicitors of the complainant, compensation to the trustee for filing the bill, and court costs, and the remainder about $4,500 was paid out to Mrs. Sallie H. Huguley on account of some six thousand dollars of said bonds owned by her, she declining to participate in the reorganization with the view to which the property was purchased, and that being her *pro-rata* of the purchase money.

Petitioners allege that said entire bid of sixty-six thousand dollars, except said sum of $10,000, was paid in bonds and coupons of the Alabama & Georgia Mfg. Company as authorized by the terms of said decree, and which said Lanier, Dallas and Kirby represented in making the purchase.

Petitioners allege that said Lanier, Dallas and Kirby filed their petition in said cause on the 14th day of September, 1892, setting forth that they, representing all the bondholders of said company, had purchased the property embraced in the decree and that in said purchase, they had acted as the agents of all the bondholders except the owners of seven thousand dollars, principal and interest.

That they had paid ten thousand dollars, and had bonds represented by them, as agents of the purchasers and as their own, aggre-

gating fifty eight thousand dollars and interest ready to pay in on said purchase under the decree; and would have the account stated, by the consent of the holders of seven thousand dollars of
200 bonds not interested in the purchase, when the court should be ready to pass upon the question of confirming the sale.

The prayer of the petition was that the sale might be confirmed the 15th of September, 1892.

A copy of said petition, with the order of the judge thereon, setting the 15th day of September, 1892, as the time for hearing the same is hereto attached marked "Exhibit A," and made a part hereof.

Petitioners allege that on the 15th September, 1892, the marshal filed a report of said sale, and on the same day, on the report of the marshal, and on the petition of L. Lanier, *et al.*, said sale was confirmed and the marshal was directed to convey to said purchasers named the mortgaged premises described in said decree.

6th. Petitioners allege that at the date of said final decree and of the sale and of the confirmation of the sale, the Huguley Manufacturing Company was in possession of said mortgaged premises, and actively operating the factory thereon situated, in which *was* 200 looms, 7,000 spindles and other machinery. That on the confirmation of the sale, said Huguley Manufacturing Company turned over to the purchasers said mortgaged premises, as they were required to do by the terms of said final decree, and said purchasers, or some of them, subsequently organized themselves into a corporation known as "The Galeton Cotton Mills," and under the latter name, said factory has been actively operated since the confirmation of said sale.

Petitioners aver that the rents and profits of said mortgaged premises received by said vendees, and those claiming under them during said time, have amounted to a large sum, to-wit, more than fifty thousand dollars over and above all expenses; and they aver that the rental value of said premises, during said term, would have been a large sum to-wit, fifty thousand dollars.

201 7th. Petitioners allege that on the 21st day of November, 1892, they duly prayed an appeal from said final decree of 30th day of May, 1892, to the United States circuit court of appeals for the fifth circuit. That said appeal was duly allowed, and a bond for the costs of said appeal was duly approved in this court, and said cause duly removed to said circuit court of appeals, and there submitted. That, thereafter, to-wit on the 30th day of May, 1893, said circuit court of appeals reversed and annulled said final decree, as will fully appear from the mandate of said court and the opinion rendered in said cause, and which are here referred to as parts hereof.

The premises considered, the petitioners pray that said final decree of May 30th, 1892, and said sale of said mortgaged property, made thereunder and the decrees confirming the same, be set aside and annulled, and that the said mortgaged premises be restored to the Huguley Mfg. Company from whose possession it was taken.

In this connection, petitioners deny that they are liable to refund any part of the said ten thousand dollars, but should it be held that they should refund the same or any part thereon then they hereby offer to refund all or so much thereof as it may be held to be their duty to refund; but they aver that the value of the rents and profits during the time the Huguley Mfg. Co., has been out of possession as aforesaid, is very much larger than said sum, and they pray that if they are liable for any part of said sum, it may be deducted from said rents and profits.

Petitioners pray that it may be referred to some suitable person, as master, to ascertain and report the value of the rents and profits of said mortgaged premises from the time that they were turned over by the said Huguley Mfg. Company to the time when the possession thereof shall be restored to said company under the order herein prayed, and any waste or damage done to any of the property turned over under said sale, or the value of said property converted by said defendants.

202 Petitioners further pray that any balance which may be found due to either of your petitioners, upon such an accounting, may be applied—

1st. To the repayment of such portion, if any, of the said sum of ten thousand dollars as petitioners may be held liable to refund.

2nd. Next to the payment of any interest in arrears on said sixty-five thousand dollars of said bonds, and

3rd. Lastly, that any remainder may be decreed to be paid over to the Huguley Mfg. Company as the successor in interest to the Alabama & Georgia Mfg. Company.

And if mistaken in the special relief prayed, petitioners pray for such other and further, or different relief, as the nature of the circumstances of their case may require *as* to equity shall seem meet.

Petitioners pray that this honorable court make an order requiring that notice issue to said L. Lanier, A. T. Dallas and J. T. Kirby and said "Galeton Cotton Mills," requiring each to show cause on a date to be named by your honors why the relief herein prayed should not be granted; and that service be perfected on the said Galeton Cotton Mills by serving said notice on said L. Lanier, who is the president, and whose place of business is in said northern district of Georgia.

JOHN M. CHILTON,
ALLEN FORTE,
BIGBY, REED, BERRY & FOTTE,
Solicitors for Petitioners.

EXHIBIT A.

Petition L. Lanier et al. for Decree of Confirmation.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING Company *et al.*
} Decree of Foreclosure in Circuit Court U. S., N. Dist. Ga.

To the Hon. W. T. Newman, judge, &c.:

The petition of L. Lanier, A. T. Dallas and J. T. Kirby shows that they representing all the bondholders of said company
203 purchased the property embraced in said decree on the first Tuesday in September, 1892, at public outcry at and for the sum of sixty-six thousand dollars, they being the highest and best bidders. In said purchase they acted as agents for all the bondholders except the owners of seven thousand dollars principal and interest. They paid ten thousand dollars cash on the spot.

Under the decree "any balance due on the purchase may be paid in the bonds of the company as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution, the bonds to be delivered into court for credit or collection according as they may be paid in part or wholly."

Your petitioners have said bonds represented by them as agents of the purchasers and as their own aggregating $58,000 and interest ready to pay in on said purchase according to said decree and will have the account stated by consent of the holders of said $7,000 of bonds not interested in the purchase when the court is ready to pass on the question of confirming the sale.

The expenses have not been agreed on in fact, that is the master's compensation, the marshal's compensation and perhaps some other items of cost.

Your petitioners now come and asked that the sale be confirmed and said items of cost be fixed and that the court will pass on the same on the 15th inst. at 10 o'clock a. m., and that the court pass such other order in the premises as may be proper.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Solicitors for Plaintiffs and Petitioners.

It is ordered that the solicitor for defendants and the holder
204 of said bonds mentioned in this petition be served and that they show cause before me on the 15th inst. at 10 o'clock a. m. why the prayer of this petitioner should not be granted.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 10th day of July, 1893.

O. C. FULLER, *Clerk.*

Due and legal service of this petition acknowledged. Copy waived July 28th, 1893.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents.

In the Circuit Court of the United States for the Northern District of Georgia, August Rules, 1893.

ALABAMA & GEORGIA MANUFACTURING Company *et al.*, Complainants,
versus
L. LANIER ET AL., Respondents.

Petitions, etc., in Equity. Filed 10 July, 1893, in Case No. 360, in Eq., in said Court.

To O. C. Fuller, clerk U. S. circuit court:

You will please enter our appearance for respondents in the above stated case.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents in said Petition.

At Atlanta, Ga., this 2nd day of August, 1893.

Answer.

In Equity in Circuit Court U. S. for Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
THE ALABAMA & GEORGIA MFG. CO., HUGULEY MFG. CO., and W. T. Huguley.

Petition, &c., filed July 10, 1893.

And now come L. Lanier, A. T. Dallas, J. T. Kirby and The
205 Galeton Cotton Mills, and, without waiving demurrer filed by them to the petition of said two corporations, defendants above named answer said petition as follows:

All allegations contained in said petition in paragraphs from one to five inclusive, are made on matter which is of record in the cause, and without admitting that the same are correct, as stated in the petition, respondents pray that the record in said cause may be referred to for the truth as to what said proceedings were, and that

petitioners be held to strict proof by the record as to the allegations so made.

Respondents further say that it may be true that said Huguely Manufacturing Company was in possession of the factory property mentioned in the petition at the date of the confirmation of the sale, as alleged, but respondents deny that such factory was of the capacity alleged.

It is true that one of the purchasers, to-wit: L. Lanier, joined in the organization of the new corporation, known as the Galeton Cotton Mills, but the other two, to-wit: said Kirby and Dallas, did not so join in the organization of said company, and whatever interest they had under the purchase they transferred to the said L. Lanier, and his associates in such new organization.

Respondents deny that the profits of said factory during the time alleged were fifty thousand dollars ($50,000), or any other sum; but on the contrary, they aver that said factory was run at a loss.

Respondents admit that said defendants in said original cause did enter an appeal on the 21st of November, 1892, from the decree of the 30th of May, 1892, and that said cause was heard by the circuit court of appeals for the fifth circuit, and that the judgment of the court below was reversed, but respondents do not admit that the result of such reversal, as shown by the record, is to set aside the proceedings had in said cause under the facts of the case. Respondents refer to the record for greater certainty as to what proceedings were had therein, and they deny that under the record petitioners are entitled to any relief whatever in the cause.

206 These respondents, by way of further answer and cross petition, allege that said petitioners are not entitled to any relief, whatever, for the reason that since the rendition of the said decree, the said two corporations named in the petition filed their appeal in said cause, for the purpose of reviewing and reversing said decree, to-wit: on the 28th day of July, 1892. Said appeal was not prosecuted; the same was abandoned and the clerk of the said circuit court was instructed by the solicitors for the two said corporations not to copy and transmit the record. Before another appeal was instituted the property described in said decree was sold. Said sale was made in all respects in pursuance of the decree therefor, and in the presence of N. J. Hammond and John C. Orrick, solicitors for said two corporations, petitioners in this case. Neither of the said solicitors made any objections to the said sale, but on the contrary said Hammond stated to said Lanier, one of the respondents, that the purchaser would get a good title. Said Orrick stated at the time of the sale that there would be no further resistance to decree by said Huguely Manufacturing Company. As soon as the said property was knocked off, said Orrick on said day of sale, cancelled the insurance policies which the Huguely Company had on the property, and notified said Lanier that said company would have nothing further to do with the property.

The said Lanier communicated said statement of the said Ham-

mond and Orrick to his associates in the purchase of the property, and the said statements were made to him by the said Hammond largely controlled him and them in making and completing the purchase.

Respondents admit that no reference was made to a master, to ascertain the nature and extent of the default of interest of the bonds of Alabama & Georgia Manufacturing Company, and the amount of principal and interest due on the same, and to whom due for the
207 reason that it was conceded during the progress of the cause, that if any of the holders of the bonds were entitled to demand a foreclosure by reason of the non-payment of the interest, that the balance of the holders were also entitled to demand a foreclosure, whether interest had been paid on the bonds so held by the balance of the holders or not. That is to say, it was conceded that if one class of bondholders was entitled to a foreclosure the other class of bondholders were likewise entitled. It was not considered desirable that there should be a foreclosure as to a portion of the bonds and no foreclosure as to the balance.

There was a portion of the bonds upon which had been paid one-half a year's interest more than had been paid on the bonds held by L. Lanier and his associates, who were seeking to foreclose the mortgage. The amount of the bonds upon which had been paid the one-half year's interest more than the others, was about ten thousand ($10,000) dollars. These bonds were held in part by D. Janopoula, and others who were unfavorable to a foreclosure of the mortgage, and these bonds were afterwards represented at the time of the confirmation of the sale, and at the time of the distribution of the proceeds, by N. J. Hammond, attorney of record for said two corporations.

There was no reference to a matter because it was agreed between said Hammond, counsel of record, and counsel for the plaintiff, Robinson, that they would take the testimony in the case and from it *and* agree who the holders of the bonds were, and the principal and interest due upon the same. It was stated in open court, as respondents are informed, that there would be no necessity for a master, because an agreement had been or would be reached.

All of the bonds were in fact audited as to principal and interest, and an account taken of the names of the holders by A. E. Buck, the commissioner named to make the sale, and after he had made his
208 calculations, respondents are informed that said Hammond went over and verified the figures of said Buck, and found that they were correct. As averred said Hammond controlled, as attorney, all or nearly all of the bonds, not embraced in the purchase, and he collected from said Buck, the percentage to which each was entitled out of the proceeds of the sale.

D. Jannopoulo, the president of said Huguley Company, controlled or owned some of the said bonds, and he accepted the amount due him on each of the bonds so held—which matter appears on record.

All of this occurred before the appeal was entered which resulted

in the reversal of the judgment of the court below. Respondents were led to believe from this conduct, so above set out, that the litigation in reference to the foreclosure had fully ended, and that all of the parties intended to acquiesce in the decree entered.

Said Lanier, and Kirby and Dallas transferred their interest in said property to the Galeton Cotton Mills, corporation duly organized before said appeal was entered. Stock to the amount of twenty thousand ($20,000) dollars was taken in same by persons other than the bondholders interested in the purchase, and the said sum was paid in on said property into the capital stock of the corporation, on the faith of the statement so made to the said Lanier and communicated to them that the title was good, and on the faith that said litigation was fully ended. Said Galeton Cotton Mills is a *bona fide* purchaser of said property, and is now in the possession of the same, and is entitled to hold, use and enjoy, free from any claim of petitioner's if any they have, which these respondents do not in anywise admit.

Said Kirby and Dallas have now no interest in said corporation, or any of the said purchase. They accepted the percentage coming to them on the bonds held by them out of the proceeds of such sale.

Respondents aver that said appeal was fraudulently pros-
209 ecuted by said two corporations after their solicitors of record had entered an appeal and had abandoned the same, and after its officers and attorneys had stated to these respondents that there would be no further resistance to said decree; and after they had actually aided in the confirmation of the sale and distribution of the proceeds, and receiving the proceeds of the sale in part as herein averred, these respondents say that they are estopped to question validity of said sale, or any proceeding had in the cause.

Respondents further answering say, petitioners claim to have a judgment for costs growing out of said appeal for the sum of two hundred and fifty — ($250). These respondents aver that it is inequitable, under the facts of the cause, for said petitioners to enforce any judgment for costs against said Robinson, or against the trust property, for the purpose of making the said costs, and they pray that on the hearing of this matter a decree be made perpetually enjoining them from enforcing the same.

Respondents further pray that said sale be decreed to be valid, and that the title of the said factory property be quieted in the Galeton Cotton Mills, and that said petitioners be perpetually enjoined from further proceedings in said case.

And that respondents have such other and further relief as to the court may seem right and preferable.

Respondents refer to the record of said cause for greater certainty as to the contents of the same, and in support of this answer and cross petition.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Respondents' Attorneys.

Filing.—Filed in clerk's office 4th day of Sept., 1893.

O. C. FULLER, *Clerk.*

210 *Demurrer.*

In Equity. U. S. Court, N. Dis. of Ga.

J. J. ROBINSON
versus
THE ALABAMA & GEORGIA MANUFACTURING Co., The Huguley Manufacturing Co., and W. T. Huguley.

Petition, etc., Filed July 10, 1893.

And now come L. Lanier, A. T. Dallas, J. T. Kirby and the Galeton Cotton Mills and demur to said petition and for cause of demurrer say that the petition in case *of* the same were true, which these respondents do not in any wise admit contains not any matter of equity whereon this court can ground any decree or give the complainant any relief or assistance as against them, these respondents.

And for cause of special demurrer these respondents say that petitioners are entitled to no relief if petition were otherwise sufficient (which these respondents do not admit) because J. J. Robinson, trustee, is not joined as respondent to the petition, and notice served on him.

2. Because the petitioners do not tender or offer to pay to these respondents the money paid into court on said purchase of the factory property and distributed among the holders of the bonds not embraced in the purchase of the property.

3. Because under the record of the cause as a whole petitioners are estopped to dispute the decree made therein and the sale thereunder.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents.

Filing.—Filed in clerk's office 4th day of Sept., 1893.

O. C. FULLER, *Clerk.*

211 *Amendment to Petition.*

In Equity in the Circuit Court of the U. S. for the N. Dis. of Ga.

J. J. ROBINSON, Trustee, &c.,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Petition of the Alabama & Georgia Manufacturing Company *et al.*, filed July 10, 1893.

And now comes the petitioners, before replication filed, having first obtained leave of the court, by way of amendment of said petition alleges:

The said Sallie P. Huguley who was the holder of certain of the bonds mentioned in the petition, did accept after the first day of January, 1891, the interest due on the first day of July, 1890, on her bonds aforesaid, thereby waiving her right to take advantage of the default of payment of said interest when the same was due and not being entitled to participate in the foreclosure aforesaid.

Wherefore the payment to her of $4,500 mentioned in said petition was without authority of law, and your petitioner can not be required to refund said sum or any part thereof.

Your petition names said J. J. Robinson, trustee, as a respondent hereto, and prays that he be made a party, and that notice of said petition be served upon him.

JOHN M. CHILTON.
ALLEN FORT.
BIGBY, REED, BERRY & FOTTE.

Order.

Ordered that the foregoing amendment be allowed and filed. This order granted before replication filed.

WM. T. NEWMAN,
U. S. Judge.

This Oct. 2, 1893.

Filing.—Filed in clerk's office 2nd day of Oct., 1893.

O. C. FULLER, *Clerk.*

212 *Replication.*

In Equity in the Circuit Court of the U. S. for the N. Dis. of Ga.

J. J. ROBINSON, Trustee, &c.,
versus
THE ALA. & GA. MFG. CO. ET AL.

The replication of The Alabama & Georgia Manufacturing Company, the petitioners in the above stated petition, to the answer of L. Lanier, A. T. Dallas, J. T. Kirby, and the Galeton Cotton Mills.

The repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said petition to be true, certain and sufficient in the law to be answered unto; and that the said answer of said defendants is uncertain, untrue and insufficient to be replied unto by *this* repliant-, without this, that any other matter or thing whatsoever in said answer contain- material or effectual in the law to be replied unto, confessed and avoided traversed or denied, *if* true; all which matters and thing- these repliants are and will be ready to aver and prove as this honorable court shall decide; and hereby pray as in and by their said petition they have already prayed.

JOHN M. CHILTON.
ALLEN FORT.
BIGBY, REED, BERRY & FOTTE.

Filing.—Filed in clerk's office 2d day of Oct., 1893.
O. C. FULLER, *Clerk.*

Order Allowing 20 Days to Take Testimony.

U. S. Circuit Court, Northern District of Georgia.

ALA. & GA. MFG. CO. ET AL.
versus
ROBINSON, Trustee, ET AL. } Petition &c.

Ordered that twenty days be allowed from this date in which for parties to take testimony in said matter.

For good cause shown the court reserves the right to extend the time mentioned.

In open court February 17, 1894.

WM. T. NEWMAN,
U. S. Judge.

213 Filing.—Filed in clerk's office 17th day of February, 1894.
O. C. FULLER, *Clerk.*

Depositions of Higginbotham, Hill, and Lanier.

In the Circuit Court of the United States, Northern District of Georgia.

HUGULEY MANUFACTURING CO. ET AL. *vs.* J. J. ROBINSON, Trustee, ET AL. } In Equity. Motion, etc.

June 11th, 1894, at 5 o'clock p. m., at the offices of Messrs. B. F. & C. A. Abbott, attorneys at law, by consent of parties, the following witnesses were sworn, and examined in the above entitled cause. It is agreed between counsel that the witnesses might be sworn by the commissioner, the testimony taken down in shorthand, transcribed and returned to court without being signed by the witnesses. The testimony as above stated, and of the following witnesses, taken by M. J. McCord, commissioner.

J. T. HIGGINBOTHAM sworn for the defendants.

Direct examination by Mr. ABBOTT:

Q. Where do you live?

A. I am living at Riverview, West Point; have been living there two years.

Q. Do you know the property known as the old Alabama and Georgia Manufacturing Company's property?

A. I do, sir.

Q. How long have you known it?

A. Since 1870.

Q. What opportunity have you had to become acquainted with the value of the property, the character of the building, the quantity and value of machinery located therein?

A. For the last four years I have been managing and superintending that property.

Q. Do you know when the Huguley Manufacturing Co. took charge of it?

214 A. Yes, sir, it was some time in January, 1890.

Q. Were you in court by that company?

A. Yes, sir.

Q. In what capacity were you employed?

A. From June or some time in May, 1890, I was general manager, that is, looking after the property generally.

Q. Who had charge of buying all the supplies of the mill, and the *find* and the making of reports?

A. I had charge of all the repair work, and making orders after July 15th. Mr. Owens, the superintendent of the mill, while he was

superintendent, I had to approve all the bills and sign his orders for him as he would furnish them to me.

Q. Was Owens under you or over you?

A. He was under me.

Q. What orders went through your hands, all of them?

A. Yes, sir.

Q. Who was president of the Huguley Company?

A. Mr. Jannopoulo. His office is in St. Louis.

Q. Who else besides him had anything to do with the management of the company?

A. No one else, except the treasurer of the company.

Q. You state that you were business agent?

A. Yes, sir. I was his local agent.

Q. Were you general manager and agent?

A. I was manager at this end, and agent also.

Q. What did W. T. Huguley have to do with that company?

A. He was director in the company.

Q. What active connection did he have?

A. I think he was chairman of the board. I don't know exactly what position he did hold, but I know he was director at one time; he was elected there in the mill.

Q. What did he have to do with the cash receipts or disbursements of that company?

215 A. Nothing that I know of.

Q. What did he have to do with the practical operation of the mill?

A. Nothing.

Q. Under whose instructions did you work?

A. Mr. Jannopoulo.

Q. When you purchased new supplies and findings, who paid for these things?

A. They were paid for in St. Louis. I approved the bills and forwarded them on to the treasurer.

Q. Do you know what amount of expenditures during the time the Huguley Company run the factory were made for new machinery and improvements?

A. Yes, sir. I had an account current that I keep, but my books are all gone to St. Louis, but I think there was something between $4,500 and $5,000. That was about the amount. I have not my books here now, but I think it is something near $5,000.

Q. Was that for improvements on the buildings or was it for new machinery, or what was it?

A. It was improvements to the tenement houses, building new houses, water house, repairing water house and repairing some work on the roof, and some parts of new machinery added.

Q. What was the difference in value of supplies and findings on hand when the Huguley Company took charge of it, and at the time the Huguley Company was sold out, September 6th, 1892?

A. The supplies and findings were about the same, I think, yes,

sir, about the same, just about what it takes to run the mill. I took it from Mr. Foster, of the Huguley Company, and I think our supplies in September, 1892, and when it was sold in January, 1890, were about the same, including all supplies and findings on hand at that time.

Q. Now, Mr. Huguley's evidence here, he swears that the
216 main building is four stories high besides the attic, and that it is 60 by 220 feet, what is the size of it?

A. The size of it, it has a basement, is three stories and the attic. The length of the mill, it is 52 feet in the clear by 212.

Q. Now, at 50 cents per square foot as costs for floors what would it cost to build this structure?

A. I would have to calculate as to how many feet there are in the different floors before I could tell you exactly. I don't exactly know.

Q. Huguley swears that the picker house is 60 x 80?

A. It is 52 x 63.

Q. Huguley says, it costs them $10,000.00, do you know what it costs?

A. I don't exactly remember, I was not with the company when it was built, but I think the building ought to be built for about $3,000 or $4,000 at the outside. I should think it would be a high building at $4,000.

Q. Huguley says the warehouse is brick?

A. It is brick, part of it with a small shed attached.

Q. Huguley says it cost $2,000.00, what would such a building cost new now?

A. About $500, I should think, would build the house new.

Q. What is the size of the supply room?

A. It is an office about 14 x 17 feet.

Q. Huguley says it cost $1,000, what did it cost?

A. I let the contract, Mr. Brown and myself, and I had it built in 1888, I believe it was, or perhaps as early as 1887, and I let the rock work to Mr. Dutton for $100 or $125, I don't remember which.

Q. What would that house be worth?

A. I could build the house for $200.

Q. Huguley says the store house cost $2,000?

A. We have what was once a store house that we converted
217 into a tenement house. It is a frame with a basement room, in other words, we use it for a three room house. I suppose you might build that house,—I could not really say, as it was the thickness of the walls, but it could be built very cheap, I suppose, for $300 or $400.

Q. Mr. Huguley swears that the superintendent's house costs $2,500?

A. I could replace that work for $1,800 very liberally.

Q. He swears that the boiler and pump cost $2,500, what is the size of the boiler house and what is the size of the pump house?

A. The boiler house is 25 x 12.

Q. What would this house cost?

A. That house could be built, I should think, allowing $3.00 a perch for stone, it ought to be built for $150 or $200, that is, the boiler house; the pump house is built of corrugated iron, and you could build that for $50.00.

Q. Huguley says there were 64 houses costing $350 to $400 apiece, that is the operative houses?

A. We have only about 44 houses on the place, outside of the superintendent's house, and that 44 I believe they range from one to three and four rooms. There is one eight room house, and the others are one and three and four room houses. I could build them all, the entire plant—I think I could build them for $7,000 or $8,000—the whole business.

Q. Mr. Huguley says the mill contains 208 looms and 7,000 spindles, how many looms were there in the mill during the time the Huguley Company had charge of the mill and when they vacated it?

A. We had 108 effective looms, and there were some looms in the basement. I suppose 15 or 20 looms, that we haven't any use for, and have never used since I have been there.

Q. How many spindles are there?

218 A. We have on an actual count about 5,676 or 5,690 spindles, that is, under an actual count in the mill. Of course, there are frames in all, enough to make 5,700 spindles.

Q. Huguley says the mill has place in it for 308 looms and 1,200 spindles, and has power under control sufficient to run 308 looms and 1,200 spindles. Has that building capacity for any such machinery?

A. No, sir, it has not.

Q. How much has it capacity for?

A. I suppose we might crowd in perhaps by utilizing the lower floor, we might crowd in machinery enough to accommodate 9,000 spindles and say, 258 looms.

Q. Huguley swears that when the Huguley Company took charge in January, 1890, there were 208 looms and 7,000 spindles, and 74 cards in the factory?

A. If he counted those old looms, I can't say, but we only had 158 effective looms. I don't take into account those others there. I think we used them up to 1878, and then we bought new looms and replaced them, and I don't think they have been used since.

Q. How many spindles were in there when the new company took charge?

A. 5,676 spindles. We have got 62 cards that we use for carding and spinning and we have two bat cards, making 64 in all.

Q. Huguley swears that his firm, W. H. Huguley & Co., immediately upon the sale at Hamilton in January, 1890, spent several thousand dollars to re-assemble the necessary and adequate force to

run the mill. Were you, yourself, in charge, did you employ this help and what did it cost?

A All the help we got there, was help we picked up right around there. On the 15th of January I think I went there, after the sale at Hamilton. I think I went there on the 15th and began organizing a force to start the mill. I picked up a lot of help who had been living there and some from the West Point Manufacturing
219 Company and some from the country. I don't think I spent but a small amount in getting these.

Q. Did you pay out all that was paid out to re-assemble that force?

A. No, sir, some of it never has been paid; there is a good deal of it in due bills that has not been paid yet.

Q. What will it amount to?

A. The only bills I ever paid, were watchman bills. I had a watchman at 90 cents a day and one at 75 cents a day, making in all about $1.65 a day for three or five or six months.

Q. Who else incurred any obligation in re-assembling that help, and, if so, what did it amount to?

A. No one else up to that time, up to late in May or June; then I began to get help. Mr. Jannopoulo, the president, and I began to assemble the help and I suppose we had to pay transportation, but they paid that all back.

Q. What did W. H. Huguley spend?

A. If they ever spent anything, I don't know it. They spent it without any authority if they did.

Q. Would you have known it if they had spent it?

A. Yes, sir.

Q. Huguley says that the Huguley Co., put in a new water house and renovated the roof of a house there?

A. I spent on the roof and water house,—I can't exactly recall the amount, of timber in all, making $400 or $500.

Q. He says they built three new operative houses; did they do that?

A. I built two, sir.

Q. He says the basement floor of the main building was underpen-d and renewed?

A. No, sir, the underpending was under the 56 feet at the front end of the building. That was jacked up and underpen-d.
220 But that underpending, I suppose in all, would amount to about $150.

Q. What about the floor of the cloth room being underpen-d?

A. That was 52 feet across, and I put in 42 x 16 feet anew. I don't remember the number of feet I used, but I paid $1.25 and $1.60 for the timber.

Q. Huguley says that there was a force of machinists set to work and kept three at work in 1892?

A. We kept one machinist all the while.

Q. Is that a force in factory parlance?

A. No, sir, I don't know about the force. It is a single individual. We kept a machinist all the while.

Q. He says these machinists cost $400 to $600 a month?

A. We paid our machinist $2.00 a day, at that time, we only paid $1.50. I have been paying since then, $2.00. I commenced the second year. The Huguley Company had a blacksmith and I discharged the blacksmith who, together with the machinist, were getting $2.75 a day. I discharged the blacksmith and put the machinist on $2.00 a day.

Q. Were all the cards in the factory refitted with new cards clothing?

A. No, sir. The Huguley Mfg. Co. spent, I think, about $1,800 on that. I bought two sets of card clothing and then I bought fifteen sets another time.

Q. How many did that leave without new card clothing?

A. About thirty-five sets, I think it was.

Q. He says that 2,000 English spindles were thoroughly overhauled, increasing the revolution, say 40 or 50 per cent.?

A. The English spindles, I think, we only have about 1,700 there but they have never been overhauled.

Q. About what was the cost of the supplies and findings by the year for all the mill such as the Huguley Manufacturing Co. operated?

221 A. I think we got along on $400 or $500 a month, about. I think $500 is about what we used.

Q. What did that consist of in short?

A. It consisted of general supplies, harness, rigging and all mill supplies, and most everything, and general other small articles, that come in running a mill.

Q. For how long a time, prior to September, 1892, did Mr. Jannopoulo order you to make requisition for supplies and fail to furnish it?

A. He never refused or failed to furnish me supplies that I made requisition for.

Q. Did you ever run short of supplies?

A. We may have run short, but Mr. Jannopoulo never refused whenever I put in an order for supplies. The instructions were, get along with as few as possible.

Q. As compared with the time that the Huguley Company had charge of it, what was the operating condition of this machinery at the time they took charge and at the time they vacated it?

A. The machinery, was, of course, taking what was allowed for mill machinery, from 2½ to 5 per cent. off, there was just about that difference.

Q. About 2½ per cent. at the time they vacated?

A. Yes, sir, that is about the calculation of mill men. We generally count it from 2½ to 5 per cent. off.

Q. Huguley says that the mill has been kept steadily in operation throughout the whole time since September, 1892.

A. No, sir, we have not run full time.
Q. When was the mill started by the present parties?
A. In September, 1892.
Q. How many weeks were you stopped?
A. Well, sir, from the 6th, we stopped about three weeks.
Q. How many Brideburg drawing frames in that mill?
A. I believe there are four Brideburg drawing frames. I am not positive though about that.

222 Q. How many Bullards?

A. About an equal number of Bullards and Brideburgs and Elgias. I think there were two Elgias and perhaps four Brideburgs or may be six.

Q. How many railway heads?
A. There was six railway heads and one railway head to an old Elgia car.

Cross examination by Mr. REED:

I have no questions that I want to ask, but I want it understood that our agreement as to reservation of objections is of force.

Mr. ABBOTT:

A. Oh, yes, that obtains.

JOHN HILL, sworn for the defendant.

Direct examination by Mr. ABBOTT:

Q. Where do you live?
A. Columbus.
Q. What is your business?
A. I have been a mill engineer for a great many years.
Q. Are you acquainted with patent mill machinery?
A. Yes, sir.
Q. Are you a practical expert in the manufacture of cotton goods by the use of cotton machinery, and are you an expert in judging of cotton machinery?
A. Yes, sir.
Q. And supplies and findings, and all property and attachments necessary to the running of a cotton factory?
A. Yes, sir, I think. I have been in the business since 1858, with 21 years in Columbus previous to that, I was in Illinois. I was with the Eagle & Phœnix mill in Columbus, and have built a number of outside mills in that time.
Q. What position did you hold with the Eagle & Phœnix?
A. I was engineer.
Q. Explain what is a scope of that office.

223 A. To make plans for the mill, bind machinery, put it in and set to going.

Q. If the machinery gets defective, it is the business of the mill engineer, to detect that?

A. Yes, sir, he is the doctor of the mill.

Q. Do you know the King mill in Augusta, Ga.?

A. Yes, sir.

Q. Who built that?

A. I engineered it and bought the machinery.

Q. What sort of a mill is that, and how is it regarded among mill men?

A. I believe it is the worst competitor they have.

Q. Is it a good mill?

A. None better anywhere.

Q. From your experience as a mill engineer, with practical knowledge of such matters, do you consider yourself competent to give them appraisement or valuation of a cotton mill?

A. I have done so very frequently.

Q. Have you examined the property now in possession of what is known as the Galeton cotton mills at West Point?

A. Yes, sir, I did to-day.

Q. Go on and state, if you please—did you make a memorandum of your estimate there?

A. Yes, sir, this is it.

Q. Now state if you please, Mr. Hill, what was its condition—the condition you found that mill in and what is your estimate of its value, and everything, taking it as it stands.

A. The building of the Galeton mills, as I understand it, was built in 1866. At that time it would have been a standard mill and was well built at that time, but it has the wear and tear on it from 1866 to 1894. The machinery in that mill was put in in 1866, down
224 to, and I think some of it in 1891, but I have given the bulk of it, as an average, the age of about 14 years, taking it all the way through. It is a heterogenous mass of machinery. There is no uniformity in it. Every time they made an improvement in this mill, they put in a different kind of machinery and the result is, they have a heterogeneous mass of machinery with various ages. They have got two or three makes of cards, two or three makes of drawing, three or four makes of spindles and three or four makes of looms, and two or three makes of lappers. This want of uniformity is not in the interest of economy and would not be done by any ordinary engineer or by a mill expert. I looked over the machinery and found it, considering its age, in about the condition I would expect. I spent a million and a half dollars in and around the Eagle and Phœnix, and I have seen the machinery in there 21 years, and have seen the gradual wear of it. I was very greatly surprised, from the general reputation of that mill, in the character and condition of machinery there, and except its heterogeneous character, it was in about — good condition as could be expected. I supposed after going through the changes that have been made, that it would have been in a rather bad fix, but I found it in a condition fully as good as I

would expect machinery of the average of 14 years to be. From the examination of the machines, some of them has the date on them; some manufacturers stamp the date of the manufacture on the end of the machine; I should say that the condition of the machinery was, considering the average age, that it was machinery that has been taken care of in and about the manner that an ordinary southern manufacturer would take care of it, but in not as good condition or as well taken care of as an eastern man would do, because they know more economic ways than we do here, and they are a little bit more penurious; but taking the fair average of the mill, I should say, unless a man is particularly penurious and particularly
225 watchful his mill would be about in the condition as that of the Alabama and Georgia, I call that mill the Alabama and Georgia, but it is the Galeton mills. I have been in a general way, acquainted with the reputation of the mill; been hearing from it and all that kind of thing, and employed operators from it during my entire southern life. We all know each other like lawyers and judges know each other, although I had not been there and examined it.

Q. What is your opinion as to the cost of that factory to be built anew, the entire outfit?

A. The King mills is a modern mill, built ten years ago. That cost $26.00 per spindle, and was built for $12.50 and $13.00, and while it was a weaving mill, the whole concern was magnificent. They had lots of money, $750,000.00, to put in the mill itself, and we paid $42,000.00 for the real estate. The real estate and everything made the cost $26.00 per spindle. The water power cost immense; I made a contract for that, I think it was $26,000.00. We had to dig a canal about 35 feet, and you know that means business.

Q. When you estimated at so many dollars per spindle, that means the entire cost of the plant, the building and operative houses?

A. O, no, sir. There is a uniform method among mill men of estimating the value of mills. You can build a coarse mill at an excess considerable, or you can take a fine mill, like Mr. Lanier's, and it proportions all the way through, and yet while a coarse mill cost $24.00 or $25.00 per spindle, a finer mill, one for making finer goods, will cost all the way from $12 to $18 per spindle. I suppose the Lanier mill will be built for $20.00 per spindle on general mill principles. Now, there is a very little variation from this. The cost of machinery is absolutely uniform, except in times like these, when people are willing to sell without regard to cost much.
226 I paid ten dollars for laying the brick of the King mill and the Lanette (or Lanier) mill was built at $9.00. One was as cheap as the other, because, I presume, in any kind of business, in the last ten years there would be a difference of $1.00 a thousand in laying brick, and then everything is cheaper. To make a general statement, I would say that that is the only way you could estimate

such a mill as this. There is a rule that never fails among experts and I have set on several mills that were burned up; I have been an arbitrator and have valued them. I valued, or appraised the Fulton cotton spinning mill, and it was built at a price of three or four hundred thousand dollars. The ordinary way of ordinary machinists, in ordinary mills, is to take the original cost and to take 5 per cent. a year off; that is the law, and that is what insurance companies, the Factory, Mutual, Phœnix and London, Liverpool and Globe, and several others that I am familiar with, that do mill business; they would offer in settlement 5 per cent. as the wear and tear of the original cost. It is not 5 or 10 off. It is 5 off the original amount. You must keep taking it off, and if you go on, it will last forever, for I never saw a mill in my life that was 40 years old that didn't want to be rebuilt. The advance of the time, higher studying and better arrangements all the way through, different class of heating and all that kind of thing makes it cheaper. Our usual way is to estimate 2½ per cent. off of the mill building a year.

As to water power mills, I have handled the water of the Chattahoochee at different times. I built two dams across it; I built a stone dam at Columbus, I think it cost about forty or fifty thousand dollars, and then I built another one three or four miles above, so I am quite familiar with the Chattahoochee river, and am quite familiar with its volume at Columbus; of course there is less of it here, as I look at the volume of water passing towards the mill, there is much less the volume of water on the river. I think there
227 is an island or system of islands. I think those islands were given to me and it had the appearance of being correct, of having 150 acres in them. To prevent obstruction up there, they have cut a branch, and that is the water that supplies the mill. Th dam is in poor condition. I took out and threw out a dam that w in equally as good a fix as that. I suppose 60 per cent. of all wate of the dam goes right under it. The water wheels are of the olden kind. Advances have been made since 1866 and 1894 in water wheels. There is one wheel there which I think is of a later date, but of the same pattern. I think there is seventeen of those wheels; seventeen of those wheels in the Eagle & Phœnix and every time I got a whack at them, I tore them out. I have taken out as many as eight or ten of them. When you come to getting at the value of them, I don't consider that they have got a great deal of value. I don't think that anything that has been run since 1866, of any kind, has got any value. In the Eagle & Phœnix there, I went ahead and bought a good deal of machinery on my own credit. I threw out the lappers, which were two years younger than these, and I found cards, a portion of which were put in there in 1876 and a portion of which were put in in 1870. They were about the identical cards that are there in the Huguley mill. They were in excellent condition as far as that is concerned, but they were old fashion. They had as good clothing as those in the Galeton mill. I took

them out bodily and put them out of doors and broke them up, saving simply the mahogany on top; I offered them at any price, and I would have sold them at $50 a piece. I didn't expect to sell them. They were just like one of these high bicycles. They had served their time; they cost $500 a piece. Those cards were fully as good or better than those in the Huguley mills. I put the average age of all of it at 14 years. That goes right through the whole business.

228 The building was in about such condition as would ordinarily be expected at that age, the top floor is worn out, and part of it worn through entirely. The way they put flooring in a mill, is to put down a plank twelve inches wide, and they put on top of that the ordinary flooring. I would consider the floors of the Huguley mill would have to be re-laid; the lower floor is in very bad condition; it has swagged down this way in one place, and looks like the bottom is knocked out. The bottom floor has swagged down two or three feet. It would be difficult to say what that kind of space is considered to be worth in a mill. When I valued the Fulton cotton spinning Mills, the top floor is very extensive, it goes up 25 or 30 feet, and goes in all sorts of ways, and as I told Mr. Elsas, it was built for grandeur. I valued it at $1.50 to replace it; it costs that to put it there. The mill had been highly successful, and a highly successful mill is worth a great deal more than a bankrupt mill, and I put it at its value and took off the per cent., for wear and tear. Down below, they have got a basement, that is as well lighted as the entire Galeton mill, and I think for about thirty feet on the inside. I valued that at sixty cents a foot. The mill is 200 feet wide and that would have been 30 feet on each side and 30 feet on the end. That would have left 140 feet. I valued that at thirty cents.

Now, to get right down to business, I should suppose that the mill building, with the character of machinery, that is, good cotton mill machinery of high speed, with spindles running 7 or 8 thousand at the limit,—such spindles as they have there, is not over about 5,600. The spindles, such as Mr. Elsas has in his mill, will run anywhere from 8 to 10 thousand revolution, and I presume that Mr. Lanier has not speeded his mill at less than 8 or 10 thousand a minute and there are 18,000 and 600 spindles at the Eagle & Phœnix and I speeded those at 8,000, the ultimate of those spindles at this mill, is 5,600. Now, taking the balance of it; the lappers, have them all first class, cards first class and machinery first class all the

229 way through, the mill built on a modern plan with modern lighting everything of that sort. A modern mill serving the purposes of the Huguley mill, I think it could be contracted to be furnished for $24.00 a spindle to-day.

Q. What number of spindles do you reckon are there?

A. I know the exact number of spindles because I counted them. It don't take long to count them. There are 5,700 spindles; that is to say the place for them is that much. Mr. Higginbotham says that they allowed the spindles to wear out, and there were some

square space, and the bulk of it is down in the basement where I would not like to put machinery. It is very low and dark and hot and it right over the water. I suppose it is within two or three feet of the water, and in going all through the mill, I presume there is 25 per cent. of the floor space of that mill that is unoccupied by machinery.

Q. What is the difference between a new mill, a modern mill such as you have described, in value such as you have described, and this mill such as you find it now?

A. At present time, the market is very close. This mill as it is now organized, it would be impossible to run it except at a loss. It would be an elephant on one'- hand- to undertake to run it as it is. It is of considerable more value than that, though, because somebody will want it for the purpose of improving it, and that gives it the value. I don't think there is a mill man in the United States that has got money and mill knowledge, who would be willing to pay anything for that mill, if he was compelled to run it as it is to-day. I would not take it as a gift, and I don't think any other man would. But, at the same time, you can take it and make it into a good mill, and you can do it at less than you could build one from the ground up but it will never be as good as a new mill, because it is the wrong height and wrong light, and then you have got to haul the goods 9 miles. The day for that has passed.

230 Q. What is the value of the property as it stands?

A. I should say, taking the wear and tear off, and taking the fact that John Jones or Richard Roe or others having knowledge and capital to buy it and reorganize it, I think the best it would be valued at $11 a spindle. Not in its present condition, but $11 a spindle to make it into a good mill.

Q. You think $11.00 per spindle is all it is worth?

A. I know it.

Q. Does that include the servant's houses and everything?

A. Oh, no, sir, I told you what that included.

Q. What do you think of the operative houses?

A. I went through each of them and took breakfast at 4 or 5 o'clock this morning at the superintendent's house. I noticed them and rode around and examined them, and I found the character of those houses to be about equal to the Eagle & Phœnix, and I think I had 150 just such houses,—the bulk of them being simply weatherboarded without any ceiling. The superintendent's house is built very good,—at that time, in 1866 I didn't go over all of them but I went over a great many of them.

Q. They are all alike, aren't they?

A. They are factory houses, yes, sir.

Q. Uniform in size, weren't they?

A. Oh, no, sir. The value of these tenement houses is to be taken in connection with the value of the mills. Outside of the mill, I don't consider tenement houses worth anything because there is no use for them. The value of these tenement houses, is based on go-

ing with the mill, as part of the mill plant, and as part of its value. There are 147 rooms and 44 buildings. That includes the dwelling of the superintendent's house.

Q. What is the value of the whole layout?

A. $10,890, that is liberal on the whole thing, considering the age and the make of them.

231 Q. Is there anything else in connection with the property that you desire to state?

A. Yes, sir. You take $11.00 per spindle, and in doing so, I would include all the spare space; the mill is in bad shape, and at that rate, that would make, $63,140.00 to be the present value of the mill. The tenement houses, $10,890.00. Now, the land includes the land around, that the factory stands on. We bought 39 acres in Augusta, and there is 69 acres about this mill, but there are 150 acres over in the island that divides this water. As I understand it, it had nothing to do with the mill except the mill owners ought to own it to control the water power and not to have somebody meddling with it. I estimated that the land was worth $5.00 an acre or $750. I was very greatly surprised at the quality of machinery when I went there. I rather expected to split that about in the middle but the valuation I have given would be its value on the basis that somebody should take it and re-organize it.

Q. What was the comparative value of the factory September 1st, 1892, assuming that this factory was sold — 1892, would it be worth any more then than now?

A. I think a man with the ready cash might be able to get it a little cheaper now than then, probably five per cent. I think everything is softer now than then.

Q. Did you state Mr. Hill or did you not, that the figures you have given was a fair valuation?

A. No, sir.

Q. What is a fair valuation of it?

A. As it now stands, I don't know how to value it. It is only on the basis of improving it.

Q. What would it be worth just to take it by itself?

A. A person would have to have a special interest; it would take a special interest.

Q. That is what a lawyer would call speculative valuation; what is it worth now, to put it up and sell under the hammer as it

232 stands; the whole property as you have described it?

A. On the basis that it would be re-organized, it is worth what I stated; on the basis that it can not be re-organized, I don't think it is worth anything, that is to say the machinery, as it stands at present, it can not be run at all.

Q. It can't be run at all in its present condition probably?

A. I don't think it can. I don't know what they have done there, but I will guarantee that. It is the legitimate result.

Q. What other chances of employing that machinery in its present condition and running it as a factory?

A. In its present condition there would be no chance at all. I don't think a man having money and experience would try to run it.

Cross examination by Mr. REED:

Q. What particular kind of goods did that mill establish to manufacture?

A. I think it is largely for imitation duck.

Q. Is that the same kind of goods the Eagle and Phœnix makes?

A. They make some duck at the Eagle and Phœnix. I built a duck mill in New Orleans larger than this one.

Q. What is the proportion of duck goods made at the Eagle and Phœnix?

A. Very small.

Q. Does the King mill make duck?

A. No, sir. The Lane mills of New Orleans make duck, and the Housey mill in Alabama make duck.

Q. Have you had large experience with these mills that make duck?

A. I have built them. I engineered and built the tower at Tollosa Falls.

Q. Your experience have been with the other?

233 A. No, sir, I think I will average around pretty well on that.

Q. You have been connected with the Eagle and Phœnix for about 21 years?

A. About 21 years. I have been away from it three years.

Q. The most of your time in the last 19 years has been with the Eagle and Phœnix?

A. My contract with the Eagle and Phœnix was that I should look after that plant, and any outside mill engineering I chose to do I could do it.

Q. The most of your time has been spent in Columbus?

A. Yes, sir.

Mr. ABBOTT: I wish you would identify that memorandum you have there and attach it to your depositions.

The memorandum referred to in the previous question in the shape of a report was identified by the witness, and same will be found hereto attached.

EXHIBIT TO JOHN HILL'S DEPOSITION.

River View, Ala.—Galeton Mills—Valuation.

This mill contains 5,740 spindles, with the accompanying machinery for the manufacture of cotton duck, single thread imitation goods, weights seven to twelve ounces to the yard.

The numbers of yarn adapted to be spun, warps No. 6 to 10, fillings from No. 3 to No. 6½.

There is a spare floor space in the mill building equal to about 25 per cent. of its floor space, from top to bottom average. The building will therefore contain when full, 7175 spindles. The mill main building was built in 1866. The picker room 1881. Boiler lease about 1881. They are of substantial construction of low ceilings and general mill features of the dates of construction. The buildings are considerably out of repair. The machinery was put in at various dates, the greater bulk being about 14 years old
234 average. It is usual to estimate wear and tear and depreciation of buildings at about 2½ per cent. a year and the uniform sale in machinery is 5 per cent. a year depreciation of its original cost.

In addition to this, the advance of inventions and improvements, frequently cause- machinery which is comparatively new to lose its value by reason of more economical application of labor. This has been particularly true on them the past ten years, and much of the machinery of this mill is antiquated and if placed on the market would find no purchasers at any price, for the reason above stated. The heterogeneous mixture of various makes of machinery and a want of uniformity and mutual adaptability in this mill is a source of depreciation and no expert would now think of organizing and combining machinery as has from time to time been done in this mill. The roller cards which produce about 50 per cent. of the work of the mill. This class of cards are not now used in any modern mill in the United States and practically they are a great detriment to the character of the work.

The dam and water power give evidence of advanced age. The former to-day is leaking through it 60 per cent. of the water above it and there is barely enough water to run the mill. It will have to be entirely rebuilt within a short time.

I estimate that a modern mill with all modern improvements in machinery and buildings of modern construction could to-day be built at River View after the class of work done in this mill including new dam and water power of approved style and real estate complete at not exceeding $24 per spindle and that this mill in its present condition of both machinery, building and power is to-day worth in an estimate, eleven dollars per spindle including the extra floor space, or $63,140.

In its present condition and with prevailing small margins in manufacturing I think this mill can not be run at a profit, and this valuation is only on the basis of reorganization and large expenditure of money for its improvement. Just as it is it is difficult to assign a value for the reason that there is little prospect in its condition of its being run except at a loss. However, to give a value I estimate as above for mill and real estate and water rights, $63,140.

To this must be added the present value of tenements as follows, $10,890.

There are in all these tenements 145 rooms averaging 15 years old of which eight rooms are ceiled and 4 plastered, the remaining 135 are weatherboard ½ inch thick or boxed and stripped 1 inch thick, with no interior ceiling or plastering.

Valuation of mill and attachment	$63,140
Tenements	10,890
Islands of pasture lands 150 acres at $5 per acre	750
	$74,780

Attest: JOHN HILL.

L. LANIER sworn for the defendant.

Direct examination by Mr. ABBOTT:

Q. Have you read Mr. Huguley's deposition filed in this motion?

A. I have.

Q. You have read what he states about new machinery being added, and the property value being increased, etc., state if you desire to, anything you wish to in connection, and in reply to what Mr. Huguley states?

A. He begins with the estimates or his version as to the cost of the property, and it is entirely in excess of the cost. I was connected with the Alabama & Georgia mills until 1881. He claims that he assumed management in 1882. He took it in 1881, and I resigned as treasurer in 1881 in June. He has had the mill since that time. Now, I think what has been given here, will establish about what it will cost or should have cost. I was contractor of those pick-rooms, that is, I was not the contractor, but I let the contract, and that was not but $4,700, which he says cost $10,000.00. The balance of the estimates on the cost of the property, is about in that proportion, as 10 is to 47.

Q. His estimates running all through are in about that proportion?

A. Yes, sir, except for the main building. The main building didn't cost half of his estimate. As to the condition of the mill at that time, the net debt of the Alabama & Georgia mills when I resigned in June, 1881, was something over 9,000 and not 10,000 dol-

lars; the net debt of the concern when the management was changed in July, 1888, at the time this statement was made up, which I have here, and which I filed as authenticated by the agent, was $36,800.00.

Q. What management was it under when it went into the hands of a receiver?

A. The management was changed. Mr. Harrington was secretary of the company, and the report shows that the net debt at that time, seven years afterwards, was augmented to $136,800.00. Now, that is a large outlay of $126,000.00 for machinery, but it would not be quite so inconsistent if the machinery which he says was in there, was there. Mr. Higganbotham has stated what is there and so has Mr. Hill. I verify what they state. That is, what is there. 2,300 spindles were added when this new company bought it, which increased it from 3,500 to 5,700 spindles. I will state that I am president of a good large cotton mill, I have just completed one of the most modern mills in the South, the construction of the mill being 15 or 20 per cent. higher than the construction of the Alabama & Georgia mill on account of the more modern idea of making better mills, and in the way of putting in machinery that can be run 10 to 20 per cent. cheaper, than that at the Galeton mills, when it was new,
and my cost of the Lanet (or Lanier) cotton mills, will not
237 be over $20.00 per spindle. Now, this mill will make the
goods that are made at the Galeton mills, as well as the machinery could have made under any circumstances, and that includes cottages painted inside and out, and modern in their appearance and comfortable as the average home. The stream power plant is more modern, I expect, than the average one in this country, and that included, makes it cost me $20.00 per spindle. As to Mr. Hill's statement as to what he could build a modern mill like the Galeton mill as to location of that mill, I would say that $24.00 per spindle is ample for it. I would very willingly agree to build a mill of that capacity for $24.00 a spindle. As for this property, I want to state that I did not — to buy it. I would rather be out $1,000 than to have been the purchaser, but my effort was to force the property up to something that would pay us 100 cents for our bonds. The property has been run by managers who have never allowed an enterprise to fall on their hands, and we have been manufacturing for over 25 years, and with all ordinary care and close attention, it has cost us over and above all of our receipts from every source and from the very best management, $4,559 since we have had it. That much has been lost in running it. I will join Mr. Hill and say that there is no manufacturer, I don't care where, he is who can take the property in the condition it is in to-day and run it any other way. Now he claimed, Mr. Huguley does, that this property has been increased in value in productive capacity, 40 to 45 per cent. I will file here with you a sworn return of the superintendent of the mill in 1888, and that was at the time it was run by Mr. Huguley who managed it and I will show you the production then, and I will state that the production then, was in excess of what it

has ever been since managed by the Galeton cotton mills; with all the improvements that have been put there, the production is less to-day, than it was in 1888 by nearly over 1,000 pounds per month.

238 Q. What is the value now of the machinery?

A. The machinery to a man who has not got money enough to run it, is entirely worthless,—I mean to run it without improving it, it is entirely worthless. I don't like to pass upon its present value under the circumstances, as I am the owner of it. I have got it insured for $65,000.00. We are now paying one per cent. and there has been no change in equipment in particular. The equipment is as perfect now as it was then, with one exception, we are paying one per cent. to-day, and one of the representatives of the association stated, that they increased nearly fifty per cent. because of some misrepresentation at the time that it was rated at a fifty-five cents mill.

By Mr. BREWSTER:

Q. What is the machinery worth, take it disconnected from the building and factory, and what is the machinery worth, per spindle?

A. If you could take the machines out of that mill, it would be a great benefit if they were away.

Q. Take the machinery in the mill, consider its value for any purpose, you have given $20.00 as being worth that much to equip; now take this factory, and what is the machinery worth?

A. It would be out of the question to find buyers like that; I could not tell you.

Q. What would it be worth in its present shape?

A. I would say the machinery is worthless to any one to run in its present shape.

Q. Can you take that machinery and make modern machinery out of it?

A. No, sir.

Mr. REED: Mr. Hill has stated that you cannot, and I don't see any use in taking up time to go into that matter again.

By Mr. BREWSTER:

Q. Can that machinery ever be converted to anything?

239 A. It can not be made valuable.

Q. You have got to replace it with new machinery?

A. You have got to put in new machines and different patterns, if you compete in the markets of to-day; that machinery can not be improved to be made as good as modern machinery.

Q. That property was bought at the sale by the marshal?

A. Yes, sir. I bought it at the sale by Marshal Buck, myself, who acted as commissioner. I bought it for Lanier, Dallas & Kirby.

Q. You bought it with the understanding that any bondholders

who held bonds of the factory might join with you in the purchase?

A. Yes, sir.

Q. Did all of them join with you in the purchase?

A. They did not.

Q. What did you do with the property after you bought it?

A. After it was bought, I went into negotiations for the sale of the property and did sell it to the West Point Manufacturing Company.

Q. When did you sell it to the West Point Mfg. Co. before, or after the reversal of that judgment?

A. We sold it during the few days after the sale, and by October, 8th, the papers were made out and we had the whole transaction closed, as between Lanier and others and the Galeton mills; that was closed within a week, and within the next week or by the first of October the entire transaction was closed between the stockholders of the Galeton mills and the West Point Mnfg. Co.

Q. Now, has the bondholders any interest whatever, in the property now?

A. Nothing at all, no interest whatever as individuals.

Q. Have they got any interest in it?

A. No, sir, none at all.

240 Q. Are they stockholders of the West Point Mnfg. Co. the same as the stockholders in the Galeton mills and were they at the time of this transaction?

A. Yes, sir.

Q. I mean the original stockholders of the Galeton mills, are they the same as the West Point Company stockholders?

A. Dallas, Lanier and Kirby sold this property to the Galeton Mills Company immediately after the sale. Within a few days after that, the company was organized and stock issued to the bondholders of the Galeton cotton mills, who, after a sale had been made to the West Point Mnfg. Co. were to transfer this stock to the West Point Mnfg. Co., and they did do it, about the first of October. The Galeton mills issued bonds to the stockholders of the Galeton mills for the amount of their original bonds in the Alabama & Georgia Company.

Q. How much money did Dallas, Lanier & Kirby advance on that sale?

A. They advanced in accordance with the advertisement, $10,000.00 on the day of sale; on the day of settlement, ten days afterwards, the West Point Mnfg. Co. loaned the Galeton cotton mills, for the purpose of paying court costs, lawyers, others expenses, and the bonds that were not represented in the purchase, the sum of $16,000.00.

Q. How much did the West Point Manufacturing Co. advance in this transaction in order to obtain title to the Galeton cotton mills?

A. $16,600.00.

Q. Were any of the stockholders in the West Point Manufactur-

ing Co. different from the bondholders in the Alabama and Georgia Manufacturing Co.? Are the stockholders of the West Point Manufacturing Co. different persons from the bondholders in the Alabama and Georgia Manufacturing Co.?

241 A. They are, with the exception, perhaps of one individual.

By Mr. REED:

Q. Who is that individual?

A. I had some of those bonds.

By Mr. BREWSTER:

Q. Did you have any bonds yourself?

A. Yes, sir, about $1,000.

Cross examination by Mr. REED:

Q. You state that you did offer property for yourself and for Kirby and Dallas, did not those three men represent the bondholders with the exception of about $7,000?

A. About that, yes, sir.

Q. Then the purchase was made by these three men for yourselves as bondholders, except that $7,000, wasn't it?

A. No, not under any positive understanding; they had the privilege.

Q. Of course I will not take time to read documents to you, but when you filed your petition for the confirmation of the sale, my understanding is, you had that statement in there; that you three bought this property for the bondholders, with the exception of this $7,000?

A. I don't vary the statement from what I made it before. They didn't know absolutely, or we didn't know absolutely, whether they were going in or not, and we submitted it to them, but they didn't come in.

Q. When you made your application for the confirmation of the sale in your representations to the court, you do not intend to say that there was a mistake in that, do you? I want to read you from this petition in which you state that you, as petitioners, Lanier, Dallas and Kirby, representing all the bondholders of said company, that you purchased the property embracing — said decree on the first Tuesday, September, 1892, at public outcry, at and for the sum of sixty-six thousand dollars, that being the highest and best bid, and that in said purchase you acted as agent for the bondholders,

242 except of the owners of $7,000 of bonds, principal and interest; do you mean to contradict that now?

A. No, sir, I do not.

Q. Didn't I understand you a moment ago to state that you did not represent all of bondholders except this $7,000; that you really bought it for yourself and for the other two, that is, Kirby and Dallas?

A. There was no positive agreement with some of those bondholders, and with other third parties who were interested. They were all considered as parties to the purchase, but only a few of them came in, perhaps $1,500 or perhaps $2,000.

Q. How many of the bondholders, after you made this purchase, did you settle with?

A. In cash?

Q. Any way?

A. There were only $6,000 in bonds that did not go into the organization of the Galeton cotton mills, and we paid them their money.

Q. Excepting those, the others went in?

A. Yes, sir, they went into the organization.

Q. Is that the way they settled it; they went into the new organization?

A. Yes, sir.

Q. On what basis did you settle with the others?

A. At the amount of the bonds with interest.

Q. You took the bonds at par with interest?

A. Yes, sir.

Q. About how much interest did you allow them on the bonds?

A. That varied. Some of them had collected some interest and some had not; it was the interest then due.

By Mr. ABBOTT:

Q. Don't the calculation in the books show that?

A. Yes, sir.

243 By Mr. REED:

Q. If I understand it, you three bought the property, and there were $7,000 of bondholders who would not go in with you, and you had to pay them their money, and you settled with them, counting their bonds at par, also allowing them whatever interest had accrued?

A. Yes, sir.

By Mr. BREWSTER:

Q. You say you paid them, you mean they were paid in court?

A. They were paid in Colonel Buck's office. The money was in his office. They were paid out of the fund that came into court except $1,000 that was not then represented that was left in Col. Buck's hands.

Interrogatories of John C. Orrick.

Petition of Ala. & Ga. Mfg. Co. & Huguley Mfg. Co.

John C. Reed, attorney at law, 5th floor, Inman building.

Dictated J. C. R. ATLANTA, GA., *June* 4, 1894.

DEAR ABBOTT: The testimony of Orrick, and of our Mr. Huguley is in the clerk's office. Will you please join with me in consenting that both sets of interrogatories be opened. Please sign the consent below and return.

Yours truly,

JOHN C. REED.

Col. B. F. Abbott, city.

We consent to open the interrogatories of Orrick, and of Mr. W. T. Huguley.

This June 4, 1894.

JOHN C. REED,
Solicitor for Pet'rs.
B. F. ABBOTT,
Of Counsel for Lanier et al.

UNITED STATES OF AMERICA,
Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To Horton Pope and W. Palmer Clarkson, Leo Ehrlick:

Whereas, there is a certain matter in controversy now pend-
244 ing and to be tried in the said circuit court, between J. J. Robinson, trustee, etc., *vs.* Huguley Mfg. Co., *et al.*, *in re*, petition of defendants to vacate sale, etc.

And whereas, John C. Orrick is a material witness in said suit on behalf of the petitioners and can not attend said circuit court in person without manifest inconvenience.

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said John C. Orrick personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of April, 1894.

[Seal U. S. Circuit Court, N. D. G.]

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee, &c.,
vs.
HUGULEY MFG. CO. ET AL.

Petition of defendants to vacate sale and for account of purchasers.

Interrogatories of John C. Orrick, who resides in St. Louis, a material witness for the petitioners in the above stated case, the answers to which to be read upon the hearing of said petition.

Interrogatory 1. Were you the attorney of any of the parties in the litigation in this case?

Interrogatory 2. Were you present or not at the United States
245 marshal's sale under the decree in this cause? Did you make or not make any statement before, at the time of, or after said sale, that no appeal would be taken, or that the appeal had been abondoned, or that the purchasers at the sale would get a good title, or that there would be no further resistance to the decree by the Huguley Mfg. Co.? State if, at such sale, you cancelled or did not cancel the insurance policies on said property, and why you did so? State whether or not after said sale, you ever notified L. Lanier, or any other person, that the company would have nothing further to do with the property. If you said anything to any person in reference to either of the matter- herein inquired about, state precisely to whom you said it, and what you said.

Interrogatory 3. Who constituted the board of directors of said corporation at the date of said sale? Were you or any other person ever authorized or not, by any resolution of said board of directors, or any bondholders of said corporation, to make any announcement that the right to appeal had been abandoned, or that said appeal would not be prosecuted, or make any other of the statements above inquired about? Was Col. N. J. Hammond ever authorized or not to make any such statement by the board of directors or bondholders?

Interrogatory 4. If you say you were present at the sale under the decree in this cause, state whether or not you heard Mr. Frank Arnold make any announcement before the bidding commenced at said sale? If so, state whether it was made loud enough to be heard by those present or not. State whether or not Lanier, Dallas and Kirby were present at said sale, and whether they were near enough

to hear said announcement or not. Examine the copy of paper attached marked Exhibit "A," and state whether or not the announcement mentioned therein was the one made at said sale, if you say any was made.

JOHN M. CHILTON,
BIGBY, REED & BERRY,
Solicitors for Petitioners.

246 The foregoing interrogatories are objected to on the ground that they are leading.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Robinson et al.

EXHIBIT "A."—Sept. 7, 1892.

Announcement.

"Notice is hereby given that any person or persons bidding for or buying this property, must do so subject to any and all equities and rights which will be hereafter set up by W. H. Huguley & Co. in behalf of themselves and the Huguley Manufacturing Company.
Atlanta, Ga., Sept. 7, 1892.

Service.

Service acknowledged, copy, notice and filing waived. Let commissioner issue an application.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Robinson et al.

This March 16, 1894.

Cross Interrogatories.

1. Had you anything to do with the giving of the notice by W. T. Huguley at the time and place of the sale? You heard that announcement did you not?

2. Were you not the attorney for the Huguley Manufacturing Company, from the time it was organized? It had no property except the cotton mill did it? Did not Mr. Jannopoulo the president of the company consult with you frequently from the time of the organization until the property was sold out as to the progress and success of the manufacturing business? Don't you know that the company lost money by running the mill? Did not Mr. Jannopoulo tell you so? Did he not tell you as a matter of business information?

247 3. Did not Mr. Jannopoulo as president of the company refuse to give bond and security and carry on the appeal first entered?

4. Is it not true that the company gave its consent that W. T. Huguley might use the name of the company in entering a second appeal? Is it not true that the company did not employ counsel for that purpose, and that it is not responsible for their fees, and that the company is not to pay any costs?

5. Is it not true that the second appeal was entered really by W. T. Huguley in his own name, and in the name of the company inquired about and in the name Alabama & Georgia Manufacturing Co.? Don't you know this to be the fact?

6. Did not Jannopoulo tell you before the sale of the property on the 1st Thursday in September, 1892, that the company would not further prosecute the case? Did he not tell you the company would not or that he would not further prosecute the appeal or words to that effect?

7. The purchasers of the property claim that they were informed that the property would be sold — from all litigation that the appeal filed had been abandoned? Did not Mr. Jannopoulo tell you that no further steps would be taken towards reversing the decree? Say exactly what Mr. Jannopoulo did tell you. Have you done so? If you can not give words give substance of the words. Have you done so?

8. Don't you know that the Huguley Mfg. Co., lost money by running the factory? Is that not the reason that it or Mr. Jannopoulo did not bid on the property. How much did Jannopoulo say it had lost?

9. If the company did not intend to abandon all effort to reverse the decree why did it let the property go to sale? Why did it cancel its insurance?

10. Don't you know that Mr. Jannopoulo received the percentage due him on his bonds? Did he not tell you so?

248 11. Did you not inform Col. N. J. Hammond prior to the sale that Mr. Jannopoulo or the company had decided not to appeal?

12. Has the Huguley Manufacturing Co., any property now, if so in what does it consist? Is it not true that the company is not engaged in any business?

13. Please state all that you know that will show that the company or Jannopoulo considered the litigation at an end before said sale? Have you done so?

Did not Mr. Jannopoulo tell you as attorney, that he would not make any further effort to reverse the decree, and was not this before the sale was had.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, *Sol. for Def'ts.*

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, etc.,
versus
HUGULEY MANUFACTURING CO.

STATE OF MISSOURI, } ss:
City of St. Louis, }

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, to us directed, we have caused JOHN C. ORRICK the witness in said commission named, to come before us, and being duly sworn, true answers to make to the interrogatories and cross interrogatories to said commission annexed, deposes and answers as follows:

To the first interrogatory he answers:

I was attorney for the Huguley Mfg. Co., one of the parties to this suit.

To the second interrogatory he answers:

I was present at the United States marshal's sale under the decree in this cause. I did not make any statement before, at the time of, or after said sale, that no appeal would be taken, or that the appeal had been abandoned, or that the purchasers would get a good
249 title nor that there would be no further resistance to the decree by the Huguley Mfg. Co. That the matter of the appeal was largely in the hands of Judge Chilton, who with W. T. Huguley had practical control of the matter. On the date of the marshal's sale, deponent was not advised as to what course would be taken as to the appeal. Judge Chilton and Mr. W. T. Huguley had that matter specially in charge, but deponent did not in any way make a confident of either Mr. Lanier or any of the attorneys on the other side as to what course would be pursued. All of them were comparative strangers to deponent. I never occupied confidential relations with any of them and I never did confide in them. I was the attorney against them, and not co-counsel with them. I remember after the sale to have seen the insurance agent at Atlanta and to have had some conversation with him about the cancellation of the insurance. That I was of the opinion that the sale of the property by the marshal, would avoid the insurance, it operating as a transfer for a time at least, of the property to the purchaser at the marshal's sale, and was of the opinion that it might be just as well to get from the agent what money I could out of the insurance for the benefit of my client. I was further of the opinion that, by the marshal's sale, the purchaser at that sale would be entitled to the possession of that property in default of our giving a supersedeas bond, and I had no confidence in our ability to give that bond. I

may have stated to some in interest with the complainant that, we would not resist the taking of possession by the purchaser under the marshal's sale as we did not, but I never notified Mr. Lanier or any other person that, the company would not have anything further to do with the property, or anything to that effect. I have a recollection of saying to Mr. Lanier that, we would not interfere with him taking possession of the mill under the marshal's sale. But I only said this, because I was of the opinion that, under the law I was powerless to prevent it.

250 To the third interrogatory he answers:

D. Jannopoulo, John C. Orrick, C. W. Harting, W. T. Huguley and John M. Clifton constituted the board of directors at this time. I, nor any other person was ever authorized by any resolution of the board of directors of the Huguley Mfg. Co., or any officer thereof or the bondholders of the company that the right of appeal had been abandoned nor that said appeal would not be prosecuted. Nor did I make any of the above statements inquired about. Neither was Col. N. J. Hammond ever authorized to make any such statement, by the board of directors or the bond-holders here; I can not say as to the others.

To the fourth interrogatory he answers:

I can not state whether I heard Mr. Frank Arnold make any announcement before the bidding commenced at said sale, I do not know any such person. I have some recollection of some person who represented the Huguley Mfg. Co. or W. H. Huguley & Co., reading a notice to the effect as stated in Exhibit "A." I remember that Mr. W. T. Huguley was present at the sale and was very active in guarding the interest of W. H. Huguley & Co. The announcement that was made, was sufficiently distinct for all present at the sale to hear. I remember that Mr. Lanier and a Mr. Dallas were present at the sale. I do not remember Mr. Kirby, but it seems to me, that I heard his name or he was pointed out to me. I think the announcement as it appears in Exhibit "A" was read by some one at the sale and that I heard it. I don't know whether it was Mr. Frank Arnold or some one else who did the reading.

To cross interrogat*ive* one he answers:

I had nothing to do with the giving of the notice by W. T. Huguley at the time of the sale. I heard whatever announcement was made.

To cross interrogat*ive he two* answers:

I was the regular attorney for the Huguley Manufacturing
251 Company from the time it was organized. Other attorneys were employed as needed on occasions to assist. The company had no property, except the cotton mill property, so far as I know. Mr. Jannopoulo, the president of the company, consulted me frequently from the time the company was organized until the property was sold, as to progress and success of the manufacturing business. I didn't run the mill but helped to run the law suit, but I don't think the mill made any money. I can't say of my own

knowledge whether the mill made or lost money. I know that Mr. Lanier was the chief instigator among the bondholders of the foreclosure proceedings. That the Huguley Manufacturing Company had deposited the interest money at the bank at Atlanta, Ga., and that he with others wrongfully refused to accept the money in payment of their coupons due at that time. That Lanier was interested in breaking down the Huguley Mfg. Co., as it was competitor of a mill which he managed a few miles off. So through the action of Lanier and others, the Huguley Mfg. Co. had to run its mill with this foreclosure proceeding pending brought on by Lanier and other bondholders. This situation made it the more difficult for the Huguley Mfg. Co. to make money in operating its mill. Mr. Jannopoulo in consulting with me as a director, explained to me that the company lost money, largely by reason of the destruction of its credit by the premature institution of this foreclosure proceeding.

To cross interrogatory three he answers:

Mr. Jannopoulo as president of the company did not refuse to give bond and security and carry on the appeal first entered. On the contrary, he always as president of the company expresed his entire willingness to take an appeal and informed Mr. W. T. Huguley in my presence that he would sign all papers required as president of the company to perfect the appeal. It was hoped by Mr. W. T. Huguley that he could get some individual or corporation at Atlanta who would become surety on the bond.

252 To cross interrogative four he answers:

I do not remember whether the company gave its consent that W. T. Huguley might use the name of the company in entering a second appeal. It is not true that the company did not employ counsel for the purpose of the appeal. On the contrary, Judge J. M. Chilton was here in St. Louis, and he consulted with me as counsel for the company to look after this whole matter of the appeal. Mr. W. T. Huguley was here with him; they were acting entirely in accord with each other and the company was in entire sympathy with Judge Chilton and Mr. Huguley in their efforts to get this case up to the court of appeals. I know of nothing that was done in that whole matter either by Mr. Huguley or Judge Chilton that was not authorized. I know of no agreement or understanding whereby the Huguley Manufacturing Co. was not to be responsible for the fees of the counsel or costs.

To cross interrogatory five he answers:

I do not know that the general appeal was entered really by W. T. Huguley in his own name and in the name of the Huguley Manufacturing Company and the Alabama & Georgia Mfg. Co. I don't know this to be the fact. I don't think I have seen any of the papers, but that whole matter was left particularly to Judge Chilton and Mr. Huguley. The Huguley Mfg. Co. being entirely willing to get to the court of appeals through their aid.

To cross interrogatory six he answers:

Mr. Jannopoulo did not tell me before the sale on the first Thurs-

day in September, 1892, or at any other time that the company would not further prosecute the case. He never told me that the company would not prosecute the appeal, or words to that effect. On the contrary, he expressed to me the conviction that the company had been greatly wronged by the action of the bondholders, that the decree was wrong and he hoped through the aid of
253 such assistance as Mr. Huguley might obtain at Atlanta the company would be able to give a bond.

To cross interrogatory seven he answers:

I do not know what the purchasers claim as to the property being sold free from all litigation. The Huguley Manufacturing Company certainly never informed them nor any body else that the appeal had been abandoned. Mr. Jannopoulo never told me that no further steps would be taken towards reversing the decree. I have given Mr. Jannopoulo's position as president of the company on this subject. I can not give his exact words, but the substance of what he said on this subject is as follows:

He was as president of the company anxious that the appeal with bond should be perfected, and hoped that Mr. Huguley whose family was more largely interested in the stock, would succeed in geting a satisfactory surety on the appeal bond.

I can say that the Huguley Mfg. Co., of which Mr. Jannopoulo was the president, never abandoned the appeal or informed purchasers or any body else to that effect.

To cross interrogatory eight he answers:

I do not know that the Huguley Mfg. Co., lost money by running the factory; I had nothing to do with the details or running of the business, but my information is that it did lose money caused largely by these foreclosure proceedings. I do not know why the Huguley Mfg. Co., or Mr. Jannopoulo did not bid on the property. If Mr. Jannopoulo ever told me what amount the company lost, I do not remember the amount.

To cross interrogatory nine he answers;

The company let the property go to sale because it could not prevent it. It had neither the money nor the credit to stop the sale. I have explained about the cancellation of the insurance. There had — trouble prior to the sale, about the insurance. The fore-
254 closure proceedings had frightened the insurance companies, and several of them as I now remember had cancelled their insurance policies prior to the sale. Then the sale of the property by the marshall under the terms of the policies, as I now recollect, avoided the insurance.

To cross interrogatory ten he answers:

I do not know personally that Mr. Jannopoulo received the per centage due him on his bonds. I think Mr. Jannopoulo personally, but not as president of the Huguley Mfg. Co. owned not more than one or two bonds and it is quite likely if any per centage on the bonds was sent to him, he received it.

To cross interrogatory eleven he answers:

I have no recollection of informing Col. Hammond prior to the sale that Mr. Jannopoulo or the company had decided not to appeal, but I do remember to have been informed by Col. Hammond about the time of the sale, of Mr. Huguley's failure to procure for the company up to that time, a surety for an appeal bond. It was always understood between us that the Huguley Mfg. Co. was ready to sign any paper pertaining to the perfecting of an appeal. The trouble was as to the surety on the appeal bond which would stay the sale.

To cross interrogatory twelve he answers:

I have stated as fully as I can Mr. Jannopoulo's position in this whole matter except I may add that he personally was a small stockholder in the Huguley Mfg. Co. and being a minority stock holder he deferred largely in his conduct as president of the company to the wishes of the other stock holders. In the matter of the appeal I could not state any facts that would show that the company or Mr. Jannopoulo considered the litigation at an end before said sale. Mr. Jannopoulo in speaking to me about the decree could only speak as president of the Huguley Mfg. Co. to its attorney.

He never told me that the company would not make any
255 further effort to reverse the decree at any time before the sale was had and the company certainly did not occupy such relations to the complainants as would warrant concessions or agreements of that character.

JOHN C. ORRICK.

Answered, sworn to, and subscribed before us this 26th day of May, 1894.

W. PALMER CLARKSON, [SEAL.]
Commissioner.

LEO EHRLICK, [SEAL.]
Commissioner.

Deposition of N. J. Hammond.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING CO., THE ALA. & GA. Mfg. Co., and W. T. Huguley
versus
J. J. ROBINSON, Trustee; L. LANIER ET AL.
} Motion, etc.

Deposition of N. J. Hammond, a witness for the plaintiffs in the above stated cause, taken without notice and by consent of counsel on April 26th, 1894, at Atlanta, Georgia, before H. L. Parry, commissioner, in the presence of John C. Reed, Esq., appearing for the plaintiffs, and Messrs. B. F. Abbott and P. H. Brewster, appearing for the defendants.

The said witness being first duly sworn, deposed and said as follows:

Direct examination by Mr. REED:

Q. In the case of J. J. Robinson, trustee, against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T. Huguley, were you of counsel for any party in that case?

A. I was counsel for the corporation of which D. Jannopoulo was president, and which had bought the factory under the original foreclosure.

256 Counsel, at this point, stipulated that the same agreement as to reserving the right to object to testimony which was entered into as to the depositions of L. Lanier, B. F. Abbott, and F. A. Arnold, heretofore taken in this cause, should also apply to this deposition.

Q. Isn't it a fact that there was once an appeal entered, after the decree in that case, and the appeal was abandoned?

A. I, as counsel for Jannopoulo, president, made out papers for an appeal, and it was abandoned because Jannopoulo did not secure my fees, or declined to pay my fees, saying that he would not litigate it further. He, at one time, was hesitating about it, but afterwards determined that he would not carry it on, but that Huguley could take up the appeal, if he saw proper. I then waited sometime on Huguley to see if he could give security to pay the costs, and secure my fee; he failed, and I quit. After I determined to quit, or pending the time when I was considering it, Mr. Chilton, of Alabama, became interested in the matter and that is the last I know of it, except by hearsay.

Q. Whom did you represent specially?

A. I never did represent anybody but Jannopoulo, president.

Q. You did not represent Mr. Huguley?

A. No; he was not my client, but I agreed finally that I would go on with Jannopoulo's appeal if Huguley would furnish the security and pay the fee, Jannopoulo having consented thereto.

Q. What efforts, if any, that you know of, were made to furnish the security?

A. Well, I only know that Mr. Huguley told me and what I got from letters about that. The American Surety Co., which we represented, sent certain blanks here to be used by Huguley, which I sent to Huguley by letter.

Q. At what time, in relation to the sale, was that appeal for which you prepared the papers, abandoned?

257 A. I am not sure about the dates; indeed, I have no memory about them. I have had to refresh my mind on the subject by letters. The date of the last letter I find on the subject, on my book, to Jannopoulo, was August 12th, 1892.

The sale, as I now recollect it, occurred on the first Tuesday in September, 1890.

Q. What happened about the date of that letter of August 12th?

A. I notified him that I was going to quit, unless an arrangement was made, and to telegraph me whether to go on at his expense or not. He did not agree to pay my expenses, and, so far as I now recollect, I quit then, about the middle of August.

Q. Were you present at the sale?

A. I was.

Q. Whom did you represent there, if anybody?

A. I represented Mrs. Sallie Huguley. Prior to the sale she had sent me a letter from Dallas, one of the complainants, and desired my advice about it. I declined to advise her on the ground that I was then trying to stop the sale by proceedings of appeal. Afterward she came here and, finding that the sale was going on, she consulted me about whether she should join Dallas, Lanier and others in a joint purchase, or whether she had better take her share on certain bonds that she had, I think five one thousand dollar bonds; I am not sure about that, but that is the neighborhood of it; or it may have been it was eight $500.00 bonds; about four thousand and some dollars, I believe. I advised her to take a share of the proceeds, and she left her bonds in my hand for collection. I had them at the day of the sale, and during the time that the property was being put up, at the north door at the court house, she and some other lady, whom I do not now recollect, stood at the corner on the sidewalk, at the corner of the tax office there, on Hunter street, so that she was in full sight of the sale, and of us. We

258 were standing, myself, Dallas, Lanier and others, were standing on the steps where the crier was selling the property.

Q. Did you make any bid at that sale?

A. I did make a bid and my recollection is it was the second bid—$65,000.00.

Q. For whom were you bidding?

A. For my individual self.

Q. What was the object of your bidding?

A. I had no $65,000, nor much part thereof; I was bidding wholly to keep Mrs. Huguley's bonds from being sacrificed by having the property knocked off at a small price. Somebody—Lanier or Dallas, I think Dallas, started the property at some bid, and I then bid something like $65,000.00 I believe that was the price I bid, and some one of them raised the price, perhaps a thousand dollars more. I then stepped to the person bidding whoever he was, and said to him "I am not trying to buy the property. I am not trying to run it up on you, but if the widow" (they knew whom I represented—the widow Huguley) "will be allowed to come in with you at your bid, if she wants to, or take her share of the proceeds, as she prefers, I will bid no more." They said "She may take her choice; come in or take her *pro-rata* share," and I bid no more and the property was knocked off to whoever the bidder was, who I understood was bidding for Lanier, Dallas and others, the combination she had been talking to me about going in with.

Q. Did you have any conversation with Mr. Lanier before the sale that day?

A. Well, I don't recollect that I did, and yet I suppose I may have done so. I remember that Mr. Orrick, who had been my associate counsel, who lived in St. Louis, and being Jannopoulo's adviser there, and who was down at Hamilton when he bought the mill under the first foreclosure, I remember he came and was here that morning, but whether I saw him the day before or not I do
259 not remember; I think not. I had supposed he came intending to buy for Jannopoulo, because I understood Jannopoulo had large money advanced, and having bought it before, but I think about half an hour before the sale he told me that Jannopoulo did not intend to buy through him at all, and that he intended to make no efforts towards bidding, and so far as he knew there would be no bidders but the Lanier party. Lanier, Dallas and others were about there, and I may have said something to them; I don't know. I don't recall any conversation except what I have repeated at the bidding. I do not know of any reason why I should have talked to Lanier and others, because I was trying to keep secret from them the fact that I intended to bid for the property. They all knew I represented the widow Huguley, I think, even before I said that to them; I think I had told them that.

Q. I want to call your attention to one subject and see if it will refresh your recollection. Do you remember that you said, either to Mr. Lanier or in his hearing, or in the hearing of any one who was probably interested with him, that the purchaser there that day would get a good title?

A. I don't remember anything about it. I supposed the pur-

chaser would or I would not have bid myself, for I would have taken the property if it had been knocked down to me. I understood at the time I was bidding, that the judgment was a valid judgment and that there was no supersedeas. I bid on that idea and I thought the purchaser would get a good title. I may have said so, but I do not recall it at all. I do not see any reason why I should have been talking to Mr. Lanier. We were on adverse sides of the case, until we got together in the Mrs. Huguley matter.

Q. What had been your relations before that? Isn't it a fact that you had been engaged in some litigation against him just before that?

A. I don't remember. I did have a case in which I had sued him for Mrs. Sallie Huguley, but I think it was after that
260 that was tried. I don't recall the dates. There was no unkind feeling between us, and yet there was no sort of intimacy between us. I had usually scored him like any other lawyer.

Q. He didn't consult you formerly on the question?

A. No, sir. He had no right to consult me at all. I was under no sort of obligation to give him advice, nor had he any right to rely on me for advice or opinion.

Q. Well, before that sale, and after the appeal had been abandoned, that you mentioned, do you recollect ever stating to Mr. Abbott that there would be no second appeal? Did you ever state that to anybody?

A. What do you mean by second appeal?

Q. I mean that there would not be a renewal of the appeal; the time was out for an appeal, wasn't it?

A. The time was out for a supersedeas, perhaps, I think it was out, perhaps on the 28th of August, but I am giving that from the character of my correspondence; but I didn't know what was going to happen in the future. I talked with Mr. Abbott like one lawyer would talk with another, on the opposite side of the case; I told him that my client, Jannopoulo, would not pay my fee, and wouldn't stand the security, and I didn't believe Huguley could; that he had consented that Huguley might, but that I didn't believe he could; he was unable to do it; but as far as my telling him what I intended to do, I do not know about that.

Q. What I want to ask you is this: If you ever said to Mr. Abbott, or to Mr. Lanier, or anybody, Mr. Brewster, or anybody interested with them, like they are, that there would be no further appeal made in the case?

A. No; I had no right to say anything of that sort. I stated what I understood to be a situation, that my client declined to go into it, and as far as I was concerned I was done, and that Huguley had tried to come into it, but could not. Now, in what sort of words I put that, I do not know.

261 Q. But you never contemplated such a thing as that there might be a renewal of the appeal?

A. I was not thinking about anybody coming after me at all. I

will state this in fairness to all parties. Nobody, so far as I know, on the other side, had any right to act upon anything I said. I was giving my conclusions about what I intended to do.

Q. Did you hear any proclamation made at the sale, the last sale, that looked like an objection to the sale, or a warning?

A. Somebody came there and gave a notice at the instance of Huguley, they said. I believe it was one of the Arnolds, Frank Arnold came with some sort of notice.

Q. Did you hear the notice?

A. Yes, but I don't remember what it was.

Q. You understood it at the time?

A. Yes.

Q. Was it given so that the people could understand it?

A. Oh yes, everybody heard it.

Q. Was that before or after the sale?

A. Before the sale began, as I recall it.

Cross-examination by Mr. ABBOTT:

Q. You represented, in that litigation, all the defendants except W. T. Huguley, didn't you?

A. I don't remember that I had any client, but one, and that was D. Jannopoulo.

Q. He was not a party, was he?

A. His company was. I represented the corporation of which he was president. If there was any other defendant I represented I do not recall it.

Q. Didn't you file the answer of the Alabama & Georgia Mfg. Company?

A. I don't remember, perhaps I did. The record will show.

Q. You represented all the defendants?

262 A. I represented old man Huguley, I believe; but the record will show whom I represented. The real person who had the money in it was D. Jannopoulo, the president of the corporation, and with him I had my correspondence. I had always recognized him as my client.

Q. He was not a party himself?

A. No, but his company was.

The foregoing deposition was taken before me, as stated in the caption, the answers reduced to writing by me, and I certify that I am not interested in the cause, nor of kin or council to either of the parties.

[SEAL.]

H. L. PARRY,
Commissioner.

Depositions of Lanier, Abbott, and Arnold.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING CO., THE ALA. & Ga. Mfg. Co., and W. T. Huguley
versus
J. J. ROBINSON, Trustee; L. LANIER ET AL.
} Motion, etc.

Depositions of L. Lanier, B. F. Abbott, and Frank A. Arnold, witnesses for the defendants in the above stated cause, taken without notice and by consent of counsel, on the 19th day of April, 1894, at Atlanta, Ga., before H. L. Parry, commissioner, in the presence of Judge J. M. Chilton, Judge Allen Fort, and J. C. Reed, Esq., representing the plaintiffs, and B. F. Abbott, Esq., and P. H. Brewster, Esq., representing the defendants.

L. LANIER, being first duly sworn, deposed as follows:

Direct examination by Mr. ABBOTT:

263 Q. You are one of the defendants in this motion of W. T. Huguley, The Huguley Manufacturing Company and The Alabama & Georgia Manufacturing Company against J. J. Robinson, yourself, Kirby and others.

A. Yes, sir.

Q. What interest, if any, did you have, or claim, on the property of the Alabama & Georgia Manufacturing Company?

A. I held some of the bonds of the company.

Q. Were you present at the sale of the property of the Alabama & Georgia Manufacturing Company?

A. I held some of the bonds of the company.

Q. Were you present at the sale of the property of the Alabama & Georgia Manufacturing Company, under a decree of the United States circuit court,—the sale had in Atlanta in September, 1892?

A. I was.

Q. Was or not any representative of the Alabama & Georgia Manufacturing Company, or of the Huguley Manufacturing Company, present at that sale?

A. Yes, sir.

Judge CHILTON: We object to that on the ground that it is illegal, irrelevant and incompetent.

Q. Who was present, if any one?

A. Col. N. J. Hammond was present.

Judge CHILTON: We object to that question also, and move to exclude the answer.

Q. What day did you come to Atlanta, prior to the sale?
A. My recollection is it was the afternoon before the sale.
Q. If you had any conference with Col. N. J. Hammond or Mr. Orrick, or both, state at what time that conference was had, and what was said?

Judge CHILTON: We object to that question on the ground that it is incompetent, first, to show that we were not entitled to an appeal in this case; second, that no statement by Col. Hammond or
264 by Mr. Orrick will affect the movants to set aside the sale, under the decree of the court of appeals entered in this case; third, because no authority is shown on the part, either of Col. Hammond or of Mr. Orrick, to make any declarations that would waive the rights of movants, or estop them from the relief prayed in the petition.

Q. What had Col. Hammond had to do with the litigation which resulted in the decree under which the sale was about to be had?

Judge CHILTON: We object to that question on the same grounds as above stated, and on the further ground that the records themselves show.
Col. ABBOTT: I want to prove that he is the same Hammond.

Q. What had Col. Hammond to do with that litigation in the United States court?
A. All that was done by an attorney, so far as I know—as attorney in the case of defendants.
Q. Who else appeared there as attorney for the defendants?

Judge CHILTON: We object to that question also.

A. Young Orrick was there, I suppose as an attorney, too.
Q. Was that the Mr. Orrick who was present at the sale, the same Orrick that appeared in the litigation in the United States court?
A. The same one; yes, sir.
Q. State what conversation you had with Mr. Hammond or Mr. Orrick, with either or both, prior to this sale and after this sale before the confirmation of the sale?

Counsel here entered into a stipulation that either side might reserve the right to move to exclude any portion of the testimony on any other grounds than that the questions are leading, and that in making such objections they may then specify the particular grounds of objection as if made before the witness answered; and that counsel might have this right at any time prior to the hearing of the motion.

265 A. Col. N. J. Hammond approached Col. Abbott and myself, immediately preceding the sale, at the court house, and was telling us of an instrument that had been typewritten on one of his letter-heads, showing some rights that Mr. W. T. Huguley ex-

pected to set up under some instrument he held, after this sale was made, and he objected, and stated to us that he reproached Mr. Huguley for using his stationery, and tore his name from the top of it; and then the conversation as to the sale of the property, and the title, was discussed, and he told me that he considered the titles to be given under this sale as perfect. The remainder of the conversation was in a general way; nothing particular.

Q. If Mr. Hammond, in that conversation, said anything to you about his having reproached Mr. Huguley for writing that notice on his stationery, what did he say, if anything, about his (Hammond's) being present lending his assent to the sale while this paper was being circulated, written on his letter-head?

A. That seemed to be one of the objections to that instrument; it was affecting.

Judge CHILTON: We object to the witness stating what seemed to be.

A. (cont'd). He stated that it was calculated to affect the price of the property—the price that it might sell for, when he was doing his best to make the property sell for as much as possible. That was, in substance, his words.

Q. Did you have any other conversation before the sale?

A. Yes, sir.

Q. With whom?

A. With Col. Hammond.

Q. What did he say?

A. He again assured me that the titles to the property would not be affected by this notice, as he claimed it was entirely a personal notice and had no legal affect upon the sale of it.

266 Q. Did you hear that notice read?

A. I did.

Q. What was the contents of that notice?

A. As I remember it, it was a notice referring to some rights that they had under some agreement.

Q. That who had?

A. That W. H. Huguley & Co. had, or the Huguley Manufacturing Company; that they would set up.

Q. As against whom?

A. Against the Huguley Manufacturing Company.

Q. But the notice claimed that these rights might by set up as against whom, or what?

A. It was the rights of W. H. Huguley & Company under some agreement with the Huguley Manufacturing Company.

Q. What reference did it have to the property in this litigation?

A. Well, really I didn't notice that it had any.

Q. I will ask you if the notice referred to any property?

A. It referred to the sale of this property; that they would set up their rights under some agreement they had with the Huguley Manufacturing Company.

Q. Against what?
A. Against this property.
Q. Who was that claim asserted by?
A. I don't know what attorney read it.
Q. Who were the parties claiming to have any rights?
A. W. H. Huguley & Company and W. T. Huguley.
Q. Is that the Mr. Huguley who is present here—W. T. Huguley?
A. Yes, sir.
Q. Who are W. H. Huguley & Co.?
A. W. H. Huguley, J. H. Noland and W. T. Huguley, as it was known at that time.
Q. That was the firm?
267 A. Yes, sir.
Q. Who read the notice?
A. I don't know the attorney. I understood he was an attorney.
Q. Who bid at that sale?
A. Col. N. J. Hammond and myself.
Q. Do you remember who made the first bid?
A. He made it.
Q. What was the amount of his bid?
A. $65,000.
Q. How many bids were made?
A. Only two.
Q. You bid it off?
A. Yes, sir.
Q. Who, if any one, was in the bidding with you? Who did you bid it off for?
A. Well, I was bidding to protect the bondholders of the property.
Q. Who were your partners in that bidding off?
A. Well, all of them who were interested in the bonds, except, perhaps, two or three bondholders.
Q. You were acting for the bondholders?
A. I was.
Q. Who else?
A. Mr. A. T. Dallas.
Q. And who else?
A. J. T. Kirby.
Q. Well, was or not Mr. Orrick present at the time of that bidding?
A. He was.
Q. After the property was bid off, what conversation, if any, did you have with Mr. Orrick, or with Mr. Hammond?
A. Mr. Orrick approached me after the sale and notified me, in a formal way, that he was then going to the insurance office and he expected to cancel the insurance on the property and sug-
268 gested that I might go up with him and insure the property so as to leave it protected; that he expected to cancel all the insurance the Huguley Manufacturing Company had on it.
Q. Who was he representing?

A. He was representing the Huguley Manufacturing Company.
Q. In whose name was it insured?
A. In the name of the Huguley Manufacturing Company.
Q. If he said anything, now, about that company not having anything further to do with the property, state what he said?
A. He stated at that time that their company would have nothing more to do with the property, and he was then going to cancel the insurance.
Q. What did you do after that, with respect to the insurance?
A. I took a draft home and had insurance placed on it at our office.
Q. If you had any other conversation with Col. Hammond after this property was knocked off, on the same day, state what that conversation was?
A. Col. Hammond and Mr. Orrick and I walked away from the court house together, and he reiterated his former statement that the titles to this property were perfect, considered as good as to his own property.
Q. Now, if anything was said by Col. Hammond or Mr. Orrick, about expediting the matter of confirming the sale, state what it was?
A. That was ten days afterwards.
Q. Well, at that time, if these gentlemen said anything about expediting the matter of confirmation, state what they said; do you remember?
A. No, sir, I do not.
Q. Were you present when the decree of confirmation was passed?
269 A. I was.
Q. Was Col. Hammond present?
A. Yes, sir.
Q. What, if anything, had been done in the meantime, as to ascertaining the amount of principal and interest due upon the outstanding bonds?
A. A schedule had been made up of the bonds with the interest added, on all of the bonds.
Q. Who made it?
A. That was made by Dallas and myself, for the bondholders.
Q. Was it or not submitted to anybody?
A. It was, at the time of the accounting here, between Col. Hammond and Mr. Buck.
Q. Col. A. E. Buck?
A. Yes, sir.
Q. State if Mr. Hammond saw the statement and whether he examined it?
A. He did, and went over the calculations.
Q. What did Col. Buck have to do with it?
A. Col. Buck was the crier of the property; he sold it. He in connection with Col. Hammond and myself, took an account of the

bonds, calculated the interest on these that had passed the coupons, the date of the coupons, and made a complete statement of the matter as between all the bondholders.

Q. Do you know whether the Huguley Mfg. Co. held any bonds of the Alabama & Georgia Manufacturing Company?

A. No, sir. There was a bond of a thousand dollars owned by Mr. Jannopoulo; it was understood that he owned a thousand dollars of those bonds.

Q. Well, who was Mr. Jannopoulo?

A. He was the president of the Huguley Manufacturing Company.

270 Q. What become of that bond?

A. It was paid by Col. Buck, through the American Trust & Banking Company, of this city.

Q. Was that one or two bonds?

A. It was two bonds, I think, of a thousand dollars each.

Q. What attorneys, if any, representing the defendants, were present at the confirmation of the sale?

A. Col. N. J. Hammond was present.

Q. What objection, if any, did he make to it?

A. None.

Q. Now, Mr. Lanier, what effect or influence, if any, did the statements of Mr. Hammond and Mr. Orrick, and their presence in court when the decree was taken confirming the sale, have upon your paying the money on the confirmation of the rule?

A. It was entirely assuring to me that I was taking no risk whatever in paying the money that was required, $10,000.00.

Q. If anybody representing the defendants said anything to you about abandoning the former appeal, the first appeal that was then pending, the appeal entered in July, immediately after the decree was entered, state what it was?

A. All I know about that was I knew the first had been abandoned, but nothing that I remember being said at the time.

Q. Well, at any time?

A. At no time. I had been assured by you and Col. Brewster that it had been abandoned.

Q. Well, I will ask you if you had any assurance from Col. Hammond that the appeal had been abandoned?

(No answer.)

Q. State whether or not you would have bid on that property, purchased it and paid your money for it, if it had not been for the assurance so made by defendant's counsel?

A. I would not.

271 Q. Were you present in court when the original decree was rendered by Judge Newman?

A. No, sir.

Q. State what that property was worth at the time of the sale Mr. Lanier?

A. Well, I considered the price it brought a fair price.

Q. That is for the whole property?
A. Yes, sir.
Q. What is it worth now? What could it be sold for?
A. I question if it would bring within $20,000.00 of it.
Q. Suppose it was put up at public auction, in this city, by consent of who ever had a claim, or ever proposed to have a claim, what could it be sold for?
A. For cash money?
Q. Yes, sir.
A. I do not believe it would bring $40,000.00.
Q. When these bondholders purchased the property what did they do with it?
A. They organized and sold to the Galeton cotton mills—a company that was organized.
Q. Did any person have any interest in the Galeton cotton mills who were bondholders or were interested in the original purchase?
A. No, sir. The organization was effected by those interested in the purchase.
Q. What interest, if any, have the bondholders of the Alabama & Georgia Manufacturing Company in the Galeton cotton mills now?
A. None now, except as bondholders.
Q. Had they, at the time of the reversal of the judgment by the court of appeals?
A. None whatever.
Q. Had they or not at the time of the entry of appeal?
A. No, sir; it had been sold.
Q. There was some cash paid on that sale, wasn't there?
A. Yes, sir.
272 Q. Who paid that cash?
A. It was paid by the West Point Manufacturing Company.
Q. How was that money secured afterwards? Was there or not any security given on the Galeton Company property for the bonds?
A. A trust deed was given to secure the bonds.
Q. Is that mortgage still subsistent and outstanding?
A. Yes, sir.
Q. And the bonds, too?
A. Yes, sir.
Q. What is the amount of the bonds?
A. $65,000.00.
Q. Do you desire to make any further statement, before the cross examination begins, as to what Mr. Orrick said to you?
A. I want to make this statement, that the question was asked Mr. Orrick if his company, the Huguley Manufacturing Company, would make any further resistance in this case, and he assured me they would not. That was at the time this conversation occurred in regard to the insurance.
Q. Did he use any metaphor in respect to that?
A. Well, he was positive there would be no further resistance.

Q. What did he say about a ship, if anything?
A. That was my part of it.

Judge CHILTON: Without waiving any objections to be interposed to the testimony in chief, the petitioner propounds the following cross interrogatories:

Cross examination by Judge CHILTON:

Q. Mr. Lanier, who furnished to your solicitors the facts on which they predicated your answer in this case, to this motion and petition?
A. Who furnished the information as to facts?
273 Q. Who furnished to your solicitors in this case the information as to facts on which your answer is predicated?
A. Well, I suppose they are familiar with the whole matter and the facts in the case.
Q. I am not asking about your present counsel, but before this petition—the answer to this petition, was filed, there was a conference with your attorneys?
A. Yes, sir.
Q. And who furnished them the facts or information on which this answer was based,—did you?
A. No, sir.
Q. Look at that answer, purporting to be filed in this motion by yourself, Dallas, Kirby and the Galeton Cotton Mills, and say who furnished to your solicitors the facts stated in your answer as to the conversation with Orrick and Hammond, and the other facts stated in the answer? You are the man who gave the information on which the answer was filed?
A. Well, I don't suppose any of the others had any talk with them at all.
Q. Well, you read the answer put in, or heard it read?
A. I started to read it.
Q. But you have read it before, or heard it read?
A. I will read it and see now. (Witness begins to read the answer.)
Q. Well, is it necessary to read it now in order to answer the question as to whether you have read it or heard it read?
A. I have heard it read. I took it up as he——
Q. Well, you have heard it read long prior to this investigation, and before it was filed, haven't you?
A. Yes, sir.
Q. Some of these conversations which you had with Col. Hammond and Mr. Orrick took place, as I understand it, before the sale, and there were other conversations after the sale?
274 A. The conversation with Col. Hammond was before the sale.
Q. Didn't you have any with Col. Hammond after the sale?
A. Yes, sir.

Q. Then you had it before and after the sale?
A. But not with Mr. Orrick.
Q. Your conversation with Mr. Orrick was after the sale?
A. Yes, sir.
Q. And you had none with Orrick before the sale at all?
A. No, sir, I don't know that I had any conversation with him. If I did it was not pertaining to this matter.
Q. So no representations made by Col. Orrick to you influenced you to become a bidder at the sale if they were not made until after the sale was had?
A. No, sir.
Q. The conversation was altogether with Col. Hammond; that is the only one that influenced you in making the bid?
A. Prior to the sale, yes, sir.
Q. Where did you get the money that you paid in on the sale?
A. The $10,000.00.
Q. Yes.
A. It was brought here by a party.
Q. Brought here how?
A. From West Point.
Q. You brought it here?
A. Yes, sir.
Q. Well, that is not answering my question as to where you got the money?
A. Well, it was brought here as the money of A. T. Dallas and L. Lanier.
Q. That is not answering my question, Mr. Lanier.
A. It was our money.
Q. Where did you get the money?
275 A. It was furnished by J. F. Hooper; it was borrowed by Dallas and Lanier.
Q. How long prior to the sale was it borrowed?
A. A day or two.
Q. How many days?
A. Don't remember.
Q. Did Cooper bring it to West Point and deliver it to you?
A. We came together here.
Q. Did he come to West Point and deliver it to you?
A. No, sir.
Q. He brought it here then?
A. He brought it by West Point and we came together from West Point here.
Q. How long was it before the sale that you made an arrangement with Hooper that he was to advance the money?
A. A day or two.
Q. Where did he live.
A. He lives at Newsite, Alabama.
Q. How far is that from West Point?
A. I don't know; 30 or 35 miles, I guess.

Q. Is it on a railroad?
A. No, sir.
Q. Is there a telegraph line there?
A. I don't know whether there is or not.
Q. How did he first know of your desire to borrow the money?
A. It was so expressed by Mr. Dallas and myself to him.
Q. Where was he?
A. At West Point.
Q. Was he there at your request?
A. I don't remember. He was there in the interest of himself, I suppose; he owned $1,500 of the bonds. I don't know whether he was there at my request or not.

Q. You say Hooper owned $1,500 of the bonds?
276 A. Yes, sir.

Q. So you had made all of your arrangements to pay the $10,000 required by the order of court before you had any conversation with Col. Hammond on the subject?
A. Conditional that we bought.
Q. But you had made your arrangements to pay in the money before you had any conversation with Col. Hammond?
A. Yes, sir, conditional arrangements. We made no arrangements that were binding on us in the case it was not bought.
Q. You had made that arrangement for the money to be paid in under the decree, in case you bought?
A. Yes, sir.
Q. Before you had any conversation with Col. Hammond at all?
A. Yes, sir.
Q. Do you mean to swear here that but for the assurance of Col. Hammond that the title was good, the bondholders would not have bought it at all?
A. I say the circumstances of the decree and the proceedings and his assurance, is what caused us to bid.
Q. And you mean to say that but for the assurance of Col. Hammond you and the balance of the bondholders would not have bought it at the sale at all?
A. I think it would have influenced us.
Q. Were there any other arrangements on the part of anybody else to have bid, that you know of, before that time?
A. No, sir.
Q. So far as you know the bondholders were the only persons who intended to purchase?
A. So far as I know,—yes, sir.
Q. You had formed a committee to buy before the sale took place hadn't you?

A. No, sir.
277 Q. You had not?
A. No, sir; we had no committee.
Q. Didn't you buy for the bondholders?
A. Yes, sir.

Q. Did you buy as a committee for the bondholders?
A. Not as a committee. Dallas and myself expected to try to protect the bondholders at the sale, as much as we could.
Q. Hadn't the bondholders conferred some days prior to this sale and determined to buy the property, and instructed you and Mr. Dallas to buy it for them?
A. I don't remember any conference.
Q. Wasn't there some communication between yourself and the bondholders to that end?
A. There may have been an expression by each one of the bondholders.
Q. How was it expressed? By what mode—orally or in writing?
A. Orally.
Q. Where were you when these expressions were made?
A. At different places. I don't know; wherever we may have met any of the bondholders.
Q. You went around to see the bondholders, did you?
A. Yes, sir; they came to see us, I guess.
Q. Are you "guessing" in all you have sworn to before in this case?
A. No, sir, I am not swearing to that at all.
Q. You know perfectly well, Mr. Lanier, whether before this sale was had there was an arrangement among the bondholders that the property should be bought in their name; now please answer whether or not there was?
A. I say if there was it was not by any meeting or conference.
Q. I will put the question again. Was there not an arrange-
278 ment, prior to this sale, and prior to your conversation with Col. Hammond, by which it was understood and agreed that Dallas and yourself should become purchasers for the bondholders, of this property?
A. Not with all of them.
Q. Which of them were omitted from the arrangement?
A. That I can not remember.
Q. With how many of them?
A. Most of them.
Q. You say most of them were parties to the arrangement?
A. Most of them had a conference, I think.
Q. Isn't it a fact that you and Dallas represented them all except the bonds held by Jannopoulo and the bonds or Mrs. Sallie H. Hnguley?
A. It is probable that we considered ourselves their representatives, or expected them to co-operate in what we might have done.
Q. It is probable you considered yourselves so—that is not answering the question, is it?
A. Well, we expected that they would agree to what we did.
Q. I have not asked you what you expected. I asked you if there wasn't an arrangement between yourselves and the bondholders that

you and Dallas should buy it in for them—all except as to the bonds held by Mrs. Sallie H. Huguley and by Jannopoulo?

A. It was, perhaps, unless a very few of the smaller bondholders.

Q. What other bondholders were there, besides these, who were not parties to the agreement?

A. I don't remember what bonds there were; it was a very small amount that was not represented. I think there was some expression by which we considered ourselves the representatives, perhaps, of all except those two.

Q. Except Jannopoulo and Mrs. Huguley?

A. Yes, sir.

279 Q. Well, what was the limit of your authority as to bidding at the sale, given you by the bondholders?

A. None given.

Q. You had unlimited authority, then?

A. No limit was given.

Q. Weren't you authorized to bid the amount of the bonds?

A. No, sir.

Q. Mr. Lanier, you say that that property was not worth more than you bid for it on the day of the sale; do I understand you to say that?

A. I say that was a fair price for it.

Q. Were you present at Hamilton, Georgia, when a sale of same property, under prior decree in the case of W. H. Huguley & Co. against Alabama & Georgia Company was had?

A. Yes, sir.

Q. How long was that before this last sale?

A. I think that sale was in January, 1890—the sale under the Huguley decree.

Q. What did the property sell for there?

A. I don't know. About $68,000.00, I think.

Q. That sale was subject to the first mortgage bonds, was it not?

A. Yes, sir.

Q. Subject to these same bonds that were foreclosed under the latter suit?

A. Yes, sir.

Q. And it brought about $68,000.00 over and above the first mortgage bonds; the buyer at that sale bid under the decree in his favor, but I will ask you whether or not there was another bid of nearly the amount that was actually bid for it?

A. Yes, sir; I think the property started considerably below that and bid up to that point.

280 Q. Weren't you interested in the bidding at that sale?

A. I was very near a man who was bidding on it.

Q. Didn't you have a business interest in connection with it?

A. Nothing of a serious nature at all, not after I learned that the whole property was to be paid for in debts.

Q. Isn't it a fact that there was a bid at that sale in money, a cash bid?

A. I don't know of any.

Q. Isn't it a fact that some Boston parties bid within $500 of the sum it was actually knocked off at?

A. It is not, to my knowledge.

Q. You say you know it was not?

A. I know it was not. To my knowledge it was not.

Q. Do you mean by that to say that you don't know, or that you know it was not a fact?

A. I say if it was the fact I know nothing of it.

Q. Didn't you, at that sale, authorize B. T. Smith and C. C. Jones to bid for and on account of the Boston parties?

A. Not a bit of it, sir.

Q. Or of yourself?

A. Not a particle.

Q. Did you make any bid yourself?

A. I don't remember. It is possible I may have made a bid on it, but I really do not remember. I couldn't answer you positively.

Q. Well, now coming back to the arrangement between yourselves and the bondholders, prior to the purchase of this property under the foreclosure in this case; you had counsel advising you at the time of your purchase, Dallas and yourself, did you not?

A. No special attorneys in the case.

Q. Well, didn't you have counsel advising you with reference to the sale?

A. We consulted attorneys in the case.

281 Q. Your attorneys?

A. Yes, sir.

Q. Was there any arrangement between yourself and Dallas and these bondholders that you represented in the purchase, prior to the sale, prior to your conversation with Col. Hammond, that you should only bid in the event that Col. Hammond waived all rights—further rights to the property?

A. There was not.

Q. Was there any arrangement between you and the bondholders, made with reference to this property?

A. No, sir.

Q. So there was no understanding or agreement that your bid, whether you bid it or not, should be dependent upon the fact as to whether or not the attorneys on the other side advised you that they did not propose to take an appeal?

A. That was left discretionary with me.

Q. When you bought in the property you did so in the exercise of the discretion the bondholders had given you?

A. In the exercise of my own discretion; Dallas and myself.

Q. But that was the discretion the bondholders gave you and Dallas and Kirby?

A. Yes, sir.

Q. So you bought in the exercise of the discretion the bondholders had given you three?

A. Our discretion.

Q. Of course it was in your discretion, but that was the discretion the bondholders had given you the right to exercise?

A. I didn't know whether that would meet their approval or not.

Q. They didn't limit you- right, by their instructions?

A. No, sir.

Q. You state in your answer to the petition in this case,
282 as follows: "It is true that one of the purchasers, to-wit: L. Lanier, joined in the organization of a new corporation known as the Galeton cotton mills, but the other two, to-wit: said Kirby and Dallas, did not so join in the organization of said company." Is that a fact. Are those statements true?

A. They were among the corporators of that company—the Galeton cotton mills.

Q. I will just ask you, Mr. Lanier, please to state if that statement which I have read to you from your answer is true or is it not true?

A. That is not true.

Q. So that statement in your answer is not true?

A. That statement is not true. Those parties were parties to the incorporation of the Galeton cotton mills. I told you I hadn't read this document carefully. I have heard of it, but that statement is a perversion, as I understand it. Kirby and Dallas were parties to the organization of the Galeton cotton mills.

Q. Now, on the organization of the Galeton cotton mills, I will ask you if L. Lanier, or W. C. & L. Lanier, didn't take all of the stock?

A. They did not.

Q. Except one thousand dollars?

A. No, sir.

Q. $500 to Dallas and $500 to L. J. Blackman?

A. They did not.

Q. Have you stock books?

A. Yes, sir.

Q. Will you produce the stock books of the corporation?

A. Yes, I can do it.

Q. Does it show truly to whom the first stock was issued?

A. Yes, it does.

Q. Was there any agreement in writing between the bondholders and yourselves, or other parties, in respect to the stock of the company?

283 A. The stock of the company——

Q. Well, I will ask you this first; was there any agreement in writing as to the stock of the company, how it should be issued and how held?

A. None at all. The stock was issued to each one of these incorporators to the extent of his claim.

Q. There was no money paid in on the stock?

A. No, sir; the stock was issued to the bondholders.
Q. So that when you reorganized you issued to each bondholder the stock of the corporation to the amount of the bonds he held?
A. Yes, sir.
Q. What was the capital stock of the corporation?
A. $65,000.00.
Q. The same as the bonds?
A. Yes, sir.
Q. You have stated already that the bonds were issued as a substitute for the bonds taken up in this purchase?
A. Yes, sir.
Q. The bonds issued were $65,000.00?
A. Yes, sir.
Q. A new issue of bonds by the Galeton Company?
A. Yes, sir.
Q. Then you issued to each bondholder an amount of stock equal to the amount of bonds he held?
A. Stock was issued to each of them prior to the issue of the bonds.
Q. Prior to issuing bonds you issued the stock?
A. For the purpose of organizing the company.
Q. When you issued the bonds they delivered up the stock, or did you hold the stock?
A. The stock was transferred to the purchasers of that property.
Q. What purchasers?
A. The new purchasers.
284 Q. Well, to whom?
A. Well, there are a great many of us.
Q. Do you mean to the corporation?
A. No, sir; to the purchasers of that property from the Galeton cotton mills.
Q. Transferred by the Galeton cotton mills?
A. No, sir; by the stockholders of the new purchasers of the property.
Q. Who were the new purchasers of the property?
A. There were a great many of us.
Q. Give me the names of every one, with his interest?
A. I will do no such thing; I can't do it.
Q. There are so many of them, or have you forgotten?
A. There are a great many of us.
Q. Well, how many?
A. There are, I suppose, seventy or eighty; I don't know the number.
Q. Do your books show the number of shares transferred to each one of these purchasers, as you call them?
A. The whole stock was transferred to the West Point Manufacturing Company in consideration of their advancing this money.
Q. Advancing who this money?
A. Money to pay the costs in the case.

Q. The $10,000.00?
A. Yes.
Q. The West Point Manufacturing Company then paid the costs?
A. That stock goes to the individual stockholders unless——
Q. Was the stock transferred to the West Point Company then?
A. Yes, sir.

Q. Now, are not the individuals composing the directory
285 of the West Point Manufacturing Company the same as those composing the directory of the Galeton cotton mills?
A. Yes, sir.
Q. It is all run under one management?
A. Yes, sir; the same president and the same secretary and treasurer.
Q. So you issued stock to the amount of $65,000.00 and bonds to the amount of $65,000.00 on this property?
A. Yes, sir.
Q. How long after your purchase?
A. Immediately afterwards.
Q. I believe you stated that there was no cash paid in on the stock?
A. The cash was in payment of the costs—$10,000.
Q. That you say was a loan?
A. That was.
Q. I will ask you whether there was any cash paid in by stockholders, for the stock?
A. Except as to the amount; that's all paid in.
Q. The $10,000.00 that you say you borrowed, do you consider that as part of the capital stock? Who paid it, and on whose stock was it paid?
A. That was paid by the West Point Manufacturing Company.
Q. When?
A. Immediately after the sale, when they bought the property.
Q. When they bought the stock from the bondholders to whom it had been transferred?
A. In about thirty different places.
Q. When the West Point mills bought that stock from the bondholders to whom it was originally issued, they paid, or secured to be paid, the $10,000 to Hooper; is that it?
A. Well, there were other amounts paid besides that; $10,000 didn't cover the cash that was paid.

286 Q. $10,000 didn't cover the cash that was paid into court?
A. It was not quite all of it; some more over that.
Q. How much more?
A. I don't remember now.
Q. As much as a thousand dollars?
A. I should think there was that.
Q. Can you give me the items?
A. No, sir.
Q. What you paid was paid into court, wasn't it?

A. No, sir; $10,000 was paid into court. Yes, sir; whatever was paid was paid into court.

Q. These bondholders, when they held stock, and when it was issued to them, they paid no money on the stock, did they?

A. No, sir.

Q. What is your individual interest in this matter?

A. It is whatever my interest may be in the stock of West Point Manufacturing Company.

Q. What is your interest in the stock of the West Point Manufacturing Company?

A. You mean the shares? The amount of my stock in the West Point Manufacturing Company?

Q. Your interest in the stock?

A. How many shares I own? Is that your question?

Q. Yes.

A. I own 1467 shares.

Q. What is the capital stock of that company?

A. Four hundred thousand dollars.

Q. Does that include the stock that has been transferred by the Galeton cotton mills to it?

A. No, sir.

Q. Do you include in your fourteen hundred shares the stock of the Galeton cotton mills?

A. No, sir.

287 Q. You say your proportion was fourteen hundred shares?

A. You asked me what my shares in the West Point Manufacturing Company was and I said 1467 shares.

Q. And you say that your interest in the Galeton cotton mills is in proportion to your interest in the West Point mills?

A. Yes, sir.

Q. What is the par value of the shares of the West Point mills?

A. $100.00.

Q. So you own 1467?

A. $146,700 out of $400,000.00

(By Mr. ABBOTT:) Mr. Lanier, I want to ask you whether or not you reported the conversation you had with Col. Hammond and Mr. Orrick to Mr. Dallas?

A. I did.

Q. Before he agreed to go into the purchase?

A. Yes, sir.

Q. Was that before the sale, before the bidding was done?

A. Yes, sir; before the sale.

Q. And Mr. Orrick also?

A. I didn't have any conversation with Mr. Orrick about it prior to the sale.

Q. What reasons, if any, did you give Dallas why he should join in with you?

A. Well, the assurance of Col. Hammond was satisfactory, authorizing us to continue bidding.

Q. If you had any difficulty in fixing the limit to which you would go in this bidding, with Dallas, state what it was?

A. Mr. Dallas seemed to be willing to bid to the extent of $65,000 on the property.

(By Judge CHILTON:)

Q. What was the date of your first conversation with Col. Hammond?

A. In regard to this property?

288 Q. Yes.

A. It was the day of the sale.

Q. Where was it?

A. Near the court house here, in this city.

Q. Where the property was being sold?

A. Yes, sir.

Q. While it was being sold?

A. Well, it was prior to the sale, immediately before the sale.

Q. Did you have one or more conversations with him before you bid in the property?

A. I had one conversation before it began to sell.

Q. Just one before you bid it in?

A. No; I had a conversation then before it was knocked down; perhaps two.

Q. All at the same time, and at the same place?

A. The time the crying was going on. Yes, sir.

Q. You say you had two conversations during the crying of the property?

A. Only one conversation before I made a bid.

Q. What was your bid?

A. $66,000.00 raising his $1,000.00.

Q. And you had had but one conversation with him prior to that?

A. Prior to that bid.

Q. State exactly what occurred in that conversation; state his language and your language and who began first?

A. Col. Hammond approached Col. Abbott and myself and suggested to Col. Abbott that they buy this cotton factory.

Q. Who do you mean by they?

A. Col. Hammond and Mr. Abbott.

Q. Was that laughingly done or seriously done?

A. Well, he was not laughing.

289 Q. Well, did he appear to be serious in that proposition, or was it simply jokingly done?

A. I don't know.

Q. You couldn't tell from his manner whether he was serious or not?

A. No, sir, I couldn't tell whether he was serious or not.

Q. Well, just state what he said, as near as you can recall the language?

A. I said that he remarked to Col. Abbott, or suggested, that we buy this cotton factory, or buy another factory; one or the other; I don't remember which. Then an allusion was made, either by myself or Col. Abbott (I think it was myself) we spoke of this notice I had heard of.

Q. The notice by Huguley had been given before that time, hadn't it?

A. No, sir; he had not.

Q. This was prior to the bidding?

A. Prior to the offer of the property.

Q. The notice had been given prior to the bidding hadn't it?

A. At the time of the announcement of the sale the notice was read, but that was sometime after this conversation with Col. Hammond, Col. Abbott and myself.

Q. You say he suggested that he and Col. Abbott buy the mill?

A. Yes, sir; I asked him in regard to this notice that I had been told would be read by Huguley or his attorney.

Q. How had you been informed about that before that time?

A. Some one had told me; I think perhaps Mr. Dallas; how he got it I don't know.

Q. Mr. Dallas knew Huguley was going to forbid the sale?

A. Had a notice that he expected to read, I didn't know of
290 the notice until I talked with Col. Hammond, and Col. Hammond stated that he had just read a notice and had torn his name from the head of the sheet that it was typewritten on, and I asked him if it would affect the sale or affect the titles to the property, and he said not in the least, or words to that effect.

Q. I will ask you if you recollect the words he used?

A. That is my recollection, that it would not affect the titles in the least; something that was assuring to me.

Q. What did you say then, in his presence?

A. He just spoke of his efforts to see that the property brought as much as possible.

Q. Well, just tell what he said?

A. He said that he was doing what he could, and working his best, to make this property bring as much as it would.

Q. Did he tell you who he was working for?

A. No, sir; I don't know anything about who he was working for. I supposed.

Q. I am not asking you what you supposed?

A. I had no reason to suppose he was working for anybody but Huguley.

Q. Did you know who he was working for?

A. No, sir; I didn't know at the time.

Q. Well, what else occurred in that conversation, any time prior to the sale there?

A. Well, I started to tell what he said; that is, that he was doing what he could to make the property bring as much as he could, and that Huguley's effort was in the other direction. I asked him what

effect it would have, and he said none whatever upon the titles of the property.

Q. Anything else?

A. No, sir.

Q. So that was all that occurred prior to the sale between you and Col. Hammond?

A. No, sir; we talked afterwards.

Q. I am speaking of prior to the sale?

291 A. We talked before he knocked it down.

Q. What was the next conversation before the sale?

A. I asked this question, if he was still satisfied the titles were good and he again assured me they were.

Q. You say he again assured you; what did he say?

A. I don't remember his words exactly.

Q. Is that all you had before the sale, before it was knocked down, with him?

A. I don't know; I believe that is all I recollect of it.

Q. When was your next conversation with Col. Hammond?

A. I talked with him as we came off from the court house, after the property had been knocked down to me.

Q. State what occurred; what the conversation was and who started it and just exactly the language used as near as you can recollect it?

A. Well, that was the time that Mr. Orrick spoke to me in regard to the insurance.

Q. I am speaking of your conversation with Hammond?

A. I don't remember now what the conversation was with Hammond. He probably said something but I don't remember what it was.

Q. Do you remember anything that Col. Hammond said after the sale?

A. Well, not at that time.

Q. Well, at any other time after the sale?

A. I don't know. He went into the confirmation of it; he went in with us to the court house at the time it was confirmed.

Q. He didn't say anything then, did he?

A. Only co-operated in the confirmation.

Q. Did he say anything?

A. No; he only went in at the judgment or settlement.

Q. Did he say anything?

A. Yes, sir; he expressed himself as satisfied.

292 Q. What did he say?

A. He said that he was satisfied to accept the money for some of the bonds that he held.

Q. Did he tell the court that?

A. No, sir; he told Col. Buck, the commissioner who sold the property.

Q. That he was satisfied?

A. Yes, sir. And was willing to accept the *pro rata* that was due

the party whose bonds he held. He held six thousand dollars of the bonds.

Q. Was that Mrs. Sallie Huguley's and Jannopoulo's?

A. That wasn't Jannopoulo's.

Q. He only said he was satisfied and ready to accept his *pro rata* on the bonds of Mrs. Sallie Huguley, that he held?

A. Yes, sir.

Q. He held those bonds for collection, didn't he?

A. Yes, sir.

Q. When was that conversation? You say it was at the time of the confirmation?

A. Yes, sir.

Q. Any other conversation now? Give the time, place and exactly what was said?

A. Well, I don't remember any other.

Q. Where was Mr. Kirby that day?

A. I really don't know; I don't remember.

Q. Was he here?

A. I have been under the impression he was, but I can not remember.

Q. You don't remember whether he was here or not?

A. No, sir. It was my recollection that he was here, but I am not certain.

Q. Is it your recollection that you conferred with him here before you bought it, that day—bought the property?

A. If he was here I did.

293 Q. But do you remember whether you conferred with him or not?

A. I say I don't remember whether he was here or not.

Q. Then you do not remember conferring with him, do you?

A. I do not.

Q. Was Mr. Kirby solvent or insolvent at the time?

A. I suppose he was solvent.

Q. Wasn't he a man of means?

A. Yes, sir.

Q. Large means?

A. Well, I don't know as I know about his means.

Q. A man of good commercial standing?

A. So far as I know he was.

Q. Wasn't he so regarded? He banked at the time at West Point?

A. Yes, sir.

Q. Where did he live?

A. In Newman.

Q. Did you know him before that time?

A. Yes, sir.

Q. Had you formed any estimate as to his solvency?

A. Well, I suppose he was a solvent man.

Q. Well now, Mr. Lanier, wasn't Mr. A. T. Dallas one of the trustees in the bonds, in the mortgage secured by the Galeton Company?

A. Yes, sir.
Q. The same Dallas who is one of the respondents to this motion?
A. It is my recollection that he was a trustee in that deed.
Q. And the same Dallas who is a respondent to this petition?
A. Yes, sir; the same Dallas.
Q. Who was the other trustee?
294 A. I think I am one, and I don't know whether Kirby is one or not.

(By Col. ABBOTT:)

Q. This conversation which you had with Orrick occurred before the confirmation, didn't it—the confirmation of the sale?
A. Oh yes; immediately after the sale.
Q. I will ask you what information you had from your counsel or either of them, as to the dismissal of the appeal or as to the appeal not being prosecuted, and as to the desire of the defendants that the property should be sold without any embarrassments?
A. I had information from both of them.
Q. State who from and what it was?
A. I was either told or written by both of you that it was; that the time had lapsed and that there would be no appeal; it was withdrawn or something; it had been abandoned.
Q. What information, if any, did you have, and from whom did you get it, as to the date of the sale being fixed away ahead; a long date fixed?
A. I think you told me about it, and Col. Brewster.
Q. What was told you?
A. That the sale was to be in September, and I think that must have been in May or June or July; it was ninety days off.
Q. What reason did Brother Brewster or myself give you for that?
A. That there was no further recourse on the part of the defendants; that they had abandoned it, or the time had elapsed for an appeal; any way, that there would be no appeal; I was notified that there would be none.
Q. What reason, if any, did Brother Brewster or myself give you why three months was fixed originally for the sale? What information did we give you about what Col. Hammond said about fixing a date way ahead?
295 A. Well, the reason given was by one of you, that it was giving ample time for the sale of the property.
Q. Was there anything said about having time to determine the question as to whether he would continue the appeal or not?
A. Yes, sir; that was mentioned, too.
Q. What was said about that?
A. I don't know whether that conversation was with you or Col. Brewster, but one or the other, and that time was given so that if any appeal would be made it would give them ample time to make it in.

Q. What information did you get from Brewster or myself as to Hammond's decision in the matter?

A. After the sale?

Q. No, sir; before the sale; about the appeal?

A. That there would be no appeal at all; you were positive, assured by Col. Hammond there would be no appeal.

Q. Did that influence you at all in your action—this information you received from Brewster and myself,—in addition to what Col. Hammond said?

A. You assured me the property would be sold, and I had confidence in the legality of it, and yourselves, and being assured by Col. Hammond that the titles would be good, I felt doubly assured and authorized to go ahead and do what I did.

Q. Do you want to make any explanation about your answer?

A. Yes, sir.

Q. Well, make it?

A. This answer here avers that Dallas and Kirby were not parties to the organization of the Galeton Company. I state that they were, and this averment here as to that part of it, if read by me at all, was entirely uncomprehended; I didn't comprehend it or would not have gone in there. They were parties to the organiza-
296 tion. I will state further that it is possible they were not parties to the incorporation of the Galeton cotton mills, but they are parties to the organization. I say they may not be; I don't know; I am not certain as to that. The books themselves produced would show who were the incorporators.

Q. This answer was drafted by your counsel?

A. Yes, sir.

Q. Upon information that you gave them?

A. Yes, sir; but if this part here had been noticed it would not have gone in.

Q. In point of fact, didn't Col. Brewster and myself furnish much of the information that went into this answer?

A. Yes, sir.

(By Judge CHILTON:)

Q. What dividend or per cent. was paid to Mrs. Sallie Huguley on her bonds?

Col. ABBOTT: The record shows that.

A. Something over 80 per cent. principal and interest.

Q. Wasn't the dividend that was to be paid based on, first, the repayment of the $10,000.00 you had paid in? Wasn't the $10,000.00 paid in taxed to her *pro rata*, on the bonds?

A. No, sir; it was not.

Q. Was that you paid her as if you had not paid in any money at all? As if there were no charge against her bonds? You paid her, in other words, her *pro rata* of the full amount of the bid, irrespective of the fact that you had furnished the $10,000.00.

A. The $10,000,00 had nothing to do with the settlement with her; her bonds, with the interest due on them, were paid in full, less the court costs and the expenses of the case.

Q. I will ask you to state if you didn't say to Mrs. Sallie Huguley, to Elliott and to Kirby, as an inducement to them to go into the reorganization, that there was no insurance upon the
297 property, and they might lose their bonds if the property was destroyed by fire?

A. I have never had any conversation with Mrs. Sallie Huguley. Perhaps to the others I may have said something.

Q. Didn't you state, in a conference of the bondholders, it would be better for these other parties to come in because there was no insurance?

A. There was insurance upon it the day it was bought, and I could not have made it before that.

Q. In what company did you insure the property?

A. I don't know; a good many companies. It was a good large amount.

Q. With what agents?

A. W. C. & L. Lanier were the agents of those companies.

Q. Have you any books showing these companies?

A. Yes, sir.

Q. Before the purchase, in conference with the bondholders, didn't you state, as a reason why they should combine, that there was no insurance upon the property?

A. I did not.

Q. Did you state anything like that?

A. No, sir.

Q. What was the amount of insurance you took on the property?

A. I don't remember.

Q. Can't you approximate it?

A. I think about $75,000.00.

Q. How much was on the property at the time you bought it?

A. There is no telling. I don't know. I suppose about $200,000.

Q. Don't you know for what amount that property had been insured, the main building and this machinery, for several years?

298 A. I don't know. They could have insured it to that extent if they had wanted to.

Q. You were once the manager of the Alabama & Georgia Manufacturing Company?

A. Yes, sir; up to 1880.

Q. How much was it insured for during that period?

A. I do not remember.

Q. Have you no recollections?

A. No, sir. About $150,000.00 I suppose.

Q. How long had Mr. Jannopoulo been president of the Huguley

Manufacturing Company, and in charge of that company, before you purchased at this sale?

A. Well, I presume at the sale in January, 1890, I don't know when he was made president.

Q. Shortly after that?

A. I suppose so.

Q. Between 1890, when he became president, and the time you purchased, hadn't he made large improvements upon the machinery of the mill?

A. Nothing except repairs.

Q. Didn't he add anything to it?

A. No, sir, no new machinery.

Q. Do you know the extent of the repairs he had made?

A. Yes, sir; there is some evidence about it. I forget the amount.

Q. Were you familiar with the physical condition of the mill during his administration?

A. No, sir; not particularly.

Q. As a matter of fact, you didn't go into the mill during his administration, did you?

A. I don't remember being in there.

(By Col. ABBOTT:)

Q. If there is anything omitted with respect to the conversation with Orrick, state what it is, where it occurred and when.

299 A. After we had gotten to the hotel I asked him why Mr. Jannopoulo, whom I supposed had owned the six mortgage bonds, was not trying to protect them at this sale; he stated that the business had not only been unprofitable to him, but had been very unsatisfactory, and he would rather lose it than have anything further to do with it.

(By Judge CHILTON:)

Q. When you say your counsel advised you that the first appeal had been abandoned, weren't you informed that an effort had been made to make the bonds the supersedeas bond required by the court, and it was abandoned because they could not get it? Hadn't you had information of that sort?

A. I didn't know the reason why it had been abandoned.

Q. You knew they had tried to make the bond and failed, did you not?

A. No, sir.

Q. Weren't you informed of that?

A. I don't remember being informed of it.

Q. You don't remember whether you were or not?

A. I don't remember being informed about that fact.

Q. Do you remember anybody telling you they had tried to make the bond and couldn't?

A. No, sir. Perhaps I may have heard speculation about it, but no information by anybody.

(By Col. ABBOTT:)

Q. In point of fact, wasn't Jannopoulo and the Huguley Manufacturing Company able to give bond?

A. I considered them eminently able from what I heard. The president of the company was known to be a rich man, and a man of means, and I suppose he could have made bond for a good deal more than that. He assured me he had the credit to raise $200,000 at the banks in St. Louis, at any time he wanted it.

Q. Was that or not the cause of its being abandoned, so far as you know, that the Huguley Company couldn't give bond?

300 A. I don't know.

Q. What was your information about it, the cause of abandoning this appeal?

A. The speculation was they couldn't give the bond.

Q. Who couldn't?

A. The Huguley Company, or the defendants in this case.

B. F. ABBOTT being next duly sworn, deposed as follows:

Direct examination by Mr. BREWSTER:

Q. Just state the facts of this case, as you know them, without being interrogated?

A. The final decree was prepared by myself and Mr. Brewster, of his firm, and it was submitted to Col. Hammond and some suggestions and alterations, perhaps, were made in it by Col. Hammond; so that we both agreed that the decree was the result of the opinion and decision of Judge Newman filed in the cause, and that far it was the joint work of plaintiff's counsel and defendant's counsel. When the decree was signed Col. Hammond gave notice of the intention to appeal. N. J. & T. A. Hammond and Mr. John C. Orrick, of St. Louis, appeared of record as counsel for the defendants, except that they did not appear for W. T. Huguley. He had no counsel in the cause, so far as I knew; certainly none who appeared and took active part in the litigation. When the court was asked to fix a date for the sale of the property Mr. Hammond stated, in open court, that if there was to be an appeal he wanted plenty of time in which to prepare the appeal, and if a sale would be had without an appeal he desired the time fixed far enough off so that the public could be fully advised of the fact, so that the property could sell without embarrassment. The court fixed, on that suggestion, the first Tuesday in September, 1892. My office was on the same floor, in the same building, with Col. Hammond, during all this time; and in passing I would frequently enquire of him whether he intended to pros-

301 ecute the appeal. I remember to have asked him a short time, say, as I now remember it, about two weeks before the sale,

whether he intended to prosecute it, and he told me that he did not think that he would. I do not remember the date, or how long it was before the day of sale, but I am quite sure that Col. Hammond told me, before the day of sale arrived, that the parties he represented would not prosecute the appeal. He appeared as counsel for the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, and also as counsel for the St. Louis Loan & Trust Company, the St. Louis Trust Company, which had a mortgage upon the Huguley Manufacturing Company property, this same property, and of course was subject to this mortgage then being foreclosed. The evening before the sale I went to the Kimball house and saw Mr. Orrick. He was complaining of the decree, and said, among other things, that "it beat the record of such cases," and he ought to have gained it, and he had come down to see what was going to be done with the property. I didn't ask him whether he expected to be a bidder on the property or what further steps he expected to take. On the morning, before the sale, standing on the pavement in front of the court house door, I heard Col. Hammond say, in a conversation with Mr. Lanier, (but it was perhaps directed to both of us, because we three were talking) that Mr. Huguley was there and was proposing to give some sort of a notice that the purchaser of the property would take it subject to the rights of him, Huguley, or words to that effect. Mr. Hammond was complaining at the conduct of Mr. Huguley in that Mr. Huguley had prepared a notice written upon one of Col. Hammond's letter-heads. Mr. Hammond said that he took — notice from Huguley and tore his advertisement off of the sheet, and told Huguley that would make Mr. Hammond in a false light, "for," said he, "here I am giving my
assent to this sale and trying to make the property bring all
302 it is worth, and you (Mr. Huguley) are going around here
with a notice written on my stationary to the effect that the purchaser will take it subject to somebody else's rights." Mr. Hammond made the first bid on the property, and Mr. Lanier made the second and last bid. I also remember hearing some conversation between him and Mr. Lanier about Hammond and Lanier going in together and buying the property, either for themselves or persons that they represented, but I don't remember the exact purport of it. Before the sale, I had a conversation with Mr. Hammond about having an auditor appointed to take an account of the outstanding bonds and ascertain the amount due thereon for principal and interest, and Mr. Hammond said: "We can ascertain among ourselves who the holders of the bonds are, the amount of each and the amount due on each, for," said he, "it is all in Lanier's evidence, and in Orrick's and in Jannopoulo's, who the holders of the bonds are, and we will save the expense of having an auditor or master to take an account of the bonds." Mr. Buck was appointed master to take an account of the bonds, and to make the sale, make the title and do all else necessary to winding the matter up, for a certain compensation, which we agreed upon, and which we considered reasonable.

Q. You say it was agreed on?
A. We agreed on it in open court—what he was to have.
Q. Who did?
A. Hammond and myself; Mr. Hammond and I agreed upon it.

(By Judge CHILTON:)

Q. Is that agreement shown by the records?
A. Yes; I think the receipt shows what he got, I think he got $400.00 as master, to make the sale, audit the bonds, pay out the money and make the titles.

This conversation about saving the expense of a master or auditor all occurred before we agreed with Col. Buck. Mr. Lanier made a calculation as to about what was due upon the bonds. That
303 calculation was handed over to Buck and was shown to Col. Hammond, and I saw Col. Hammond examine it; and Col. Hammond still objected, stating, of course, that if any error should be found in the calculation he would reserve the right to move to correct it, and we told him, of course that right was reserved. The notice for confirmation was served upon Col. Hammond and he acknowledged service for defendants, and was, I believe, in court when the order of confirmation was passed. I reported to Mr. Lanier who was the buyer of this property, the substance of the conversations I had with Col. Hammond. Mr. Lanier asked me if the litigation was over and I told him that the appeal was abandoned, or all further contest was abandoned, as I understood it from these conversations with Col. Hammond. The bid of Mr. Lanier for the property was considered as cash, and when the expenses of counsel fees, the master's fees, the court costs, etc., were deducted, Mrs. Huguley got her proper proportion of the fund in court on her bonds, without any further draw-back; something over eighty cents in the dollar, I think. The St. Louis Trust Company had foreclosed this mortgage in this same bill, and when I saw Col. Orrick here I supposed he was here for the purpose of making the property bring enough, at least, to pay the St. Louis Trust Company, something at least, on its debts, and I was surprised when he failed to be a bidder at the sale and they abandoned it. I heard Col. Orrick tell Mr. Lanier that he would cancel the insurance on the property; at least it is my recollection that I heard that statement, coming away from the court house. And that is about all I know about it.

(By Mr. BREWSTER:)

Q. Well, Mr. Abbott, as counsel representing the trustee in that litigation, was it not the purpose not to sell that property until all questions as to the litigation were disposed of?

A. Oh, yes, sir; and that was Col. Hammond's statement—
304 the substance of Col. Hammond's statement, in the United States court; he wanted a day named far enough ahead so that the property could be thoroughly advertised and could sell

without any embarrassments. In the meantime, of course, if an appeal should be taken the sale would not be had.

Q. How long after the decree was it before it was ordered sold?

A. My recollection is the decree was dated about the first of July; I am inclined to think the 3rd of July, 1892; and the date of the sale was fixed for the first Tuesday in September following. It might have been June. I know that Judge Newman had rendered a decision in writing, a long opinion, a considerable time before that, and we took sometime in which to prepare the decree. It took sometime for us to agree as to exactly what the decree should be, as to legal result of the decision; and in the meantime, (as Judge Chilton observes,) there was a motion filed by counsel for plaintiffs to tax as a part of the costs against the defendants; the trustee's counsel fees for conducting the litigation to a decree, and after a hearing on that Judge Newman decided adversely to that claim. And then we prepared a final decree for the sale of the property, which was *nisi*, as I remember it now, I believe for ninety days; at least the decree was; they had the right to pay the money in any time before the sale.

Q. Isn't it true that the purpose to sell had never been determined absolutely until we had ascertained that Hammond had abandoned that appeal, and didn't advertise, and use Hammond's information to you, before the day of sale, that their appeal had been abandoned and he wanted the property sold, and sold for all it would bring?

A. He informed me that the litigation was ended, and the fight had been abandoned. I don't know that he made the remark in conjunction with that that he wanted the property to bring all it would.

305 Q. Wasn't that information conveyed to the purchaser?

A. Oh, yes; I told Lanier and Dallas. Dallas was very timid and nervous about it, and didn't want to give as much as $65,000.00 for the property, and I told Dallas myself that he had Mr. Hammond's assurance that this thing was all over; of course, if the Alabama & Georgia factory ever had a good title that they would get that title.

Q. You assured Dallas of that?

A. Yes, sir; I told Dallas of that. I helped Lanier to get Dallas to go into the sale. Lanier seemed to be anxious to do what he could to protect the bondholders in the matter, and as I now remember, I think Kirby was a little disinclined to bid.

Q. And you communicated to them what Hammond had said?

A. Yes sir; and, I will not be certain of that, the record will show better, the advertisement was to run from a certain date ahead, at which, as soon as the money was paid in, the advertisement should begin. I don't think the advertisement ran from the date of the decree up to the sale, but I think there was a day named ahead in which, if the money was not paid into the hands of the court, then the advertisement should start, and Buck was directed to advertise it in the Constitution and the Journal, for

so long. I will not be accurate about those dates and figures, because I have not the record before me. That is my recollection, and the record will show.

I want to state that I prepared this answer myself, and I prepared it on information that I had and such information as I understood Mr. Lanier had gotten.

Q. What is your recollection of that notice that Mr. Huguley read?

A. My recollection is that just before the crying of the property began I noticed Mr. Frank Arnold moving about there pretty
306 lively and finally, just as Col. Buck began the sale, and before any bid was made, Mr. Arnold read the notice to the effect that the purchaser of that property would take it subject to the rights of W. T. Huguley and W. H. Huguley & Co. That is my recollection of the notice.

Q. What were their rights, as asserted there?

A. I didn't know and I don't know yet.

Q. Well, was that claim based on this litigation, from the notice?

A. It never said anything about this litigation. Mr. Huguley was a party to the litigation originally, and a decree *pro confesso* was taken against him, and he never appeared during the litigation, either in person or by counsel, and I didn't know whether the notice read by Mr. Arnold had reference to the rights growing out of this litigation or some other rights; it said the rights of W. T. Huguley and W. H. Huguley & Co.

Q. Were W. H. Huguley & Co. parties to this suit?

A. No, sir, not as I now remember. The record shows.

Q. And W. T. Huguley was only a party as one of the trustees?

A. He was made a party then on the allegation that he was interested adversely to the trust.

Q. He was one of the original trustees to the deed?

A. Yes, and was made a party defendant in order to square the record.

Q. How many bonds were present at the settlement of the sale the disbursement of the money?

A. Well, when we made the settlement, Col. Hammond was there—all the bonds were there except, I think, two or three; two bonds which they say Jannopoulo owned, or the Huguley Company or some party in St. Louis; and perhaps one other bond; but all were there except a thousand or fifteen hundred dollars, any how.

Cross examination by Judge CHILTON:

Q. You say Mr. W. T. Huguley was not represented?

307 A. No, sir; not by counsel, I frequently asked Col. Hammond to acknowledge service for him and he said no, that he didn't represent him, and I always got Mr. Huguley to acknowledge it himself.

Q. There was no representative of his present at the sale? Col. Hammond or Mr. Orrick didn't represent him?

A. Not so far as I know.

Q. They didn't state that they represented him?

A. No, sir.

Q. They didn't claim to represent him?

A. No, sir. Col. Hammond always claimed that he did not represent him.

Q. You say Mr. Huguley, for W. H. Huguley & Co. and himself, gave notice at the sale that whoever bought would buy subject to certain rights?

A. That is my recollection of the notice.

Q. And he gave that through an attorney who was present?

A. Yes, Mr. Arnold.

Q. Did you stop to inquire of Mr. Arnold the nature of this claim?

A. No, sir.

Q. Did you stop to inquire whether these rights related to this appeal or not?

A. No, sir. Col. Hammond and I talked about that, and Col. Hammond said that he didn't think Huguley had any rights in it. We just talked about it generally.

Q. He didn't claim in that conversation, to represent Mr. Huguley?

A. Not at all. We were talking about the effect of the giving of that notice on the morals of the sale; whether it would affect the sale.

Q. You spoke of a certain conversation between Col. Hammond and yourself prior to the sale, with reference to the abandonment of the appeal; did he ever tell you he had abandoned all right
308 of appeal to any of the parties to that suit?

A. He said there would be no appeal.

Q. Didn't he say that the parties had been trying to make a supersedeas bond the $10,000.00 required and couldn't get it?

A. He told me that Huguley had, but he told me that Jannopoulo wouldn't do it; he had abandoned it.

Q. That Jannopoulo personally?

A. No, sir; I mean the Huguley Company, as I understand it.

Q. Didn't he say that Jannopoulo personally would not become one of the bondsmen, but that Huguley & Co. were trying to make the bond and that Huguley was trying to make the bond?

A. I do not remember about that, Judge. I don't know that he did say that Jannopoulo would not do anything further about it.

Q. You represented the trustee, Robinson?

A. Yes, sir.

Q. At the time the appeal was taken on which this case was reversed by the court of appeals?

A. Yes, sir.

Q. You represented the men purchasing at the sale at that time?

A. Well, I can't say. I don't think I did. I never represented them only in the sense as bondholders, in buying the property and paying in their bonds and seeing to the distribution. After that

event occurred I didn't represent Mr. Lanier. I never got his charter, and don't know who did. I represented one bondholder,—the Atlanta national bank.

Q. Didn't you, as attorney for Robinson, trustee, resist the right of appeal?

A. I did. I acknowledged service for him. The record shows I acknowledged service.

309 Q. Didn't you resist it in an argument before the court?

A. Yes.

Q. I will ask you now, in that argument didn't you urge substantially the same reasons why the appeal should not be taken as you have stated in your testimony here to-day, with reference to the conversation with Hammond and his acquiescence in the report of sale, and the confirmation, as a reason why the appeal should not be taken; you argued it, didn't you?

A. Yes; I had some sort of an idea that a second appeal could not be taken, after the first one had been taken, been entered and abandoned, and very likely I did, in argument, urge some of these reasons at least why the judge should refuse to grant the second appeal.

Q. You drew up the answer to this petition?

A. Yes, sir.

Q. Isn't it a fact that in the argument resisting the appeal you urged substantially the same reasons why it should not be granted as set up in this answer to the petition in this case; and wasn't Col. Hammond called on for a statement then, and made one, in the presence of the court, in which he said that he had not done anything whatever to deprive any client that he represented of the right to appeal?

A. I don't think Col. Hammond said that.

Q. Do you remember that he made a statement?

A. He made the statement that he didn't represent Huguley.

Q. And you don't remember his making the statement in open court that he had done nothing, that no act of his could be stated in which he had relinquished any right of appeal on the part of any client he represented?

A. Well, he made a statement, I think: but I do not think he made it as strong as you put it; but I don't remember. I had forgotten it until you mentioned it. He came up in court and

310 he made some sort of a statement, but I don't think he said he hadn't done any act or said anything to deprive any client he represented of the right of appeal; I do not.

Q. Well, in resisting that appeal, you did urge substantially the same grounds that are set up in this answer?

A. Well, I don't remember exactly what is in this answer.

Q. The statement made by Hammond that there would be no appeal, and by Orrick?

A. That Hammond said the first appeal had been abandoned; yes I guess I did.

Q. In Col. Hammond's statement to you did he ever tell you that he released or relinquished any right of appeal?

A. He never used those words.

Q. The first order required a supersedeas bond of $10,000.00?

A. Yes, sir.

Q. Don't you remember that there was an effort made to get the American Surety Company on that bond?

A. I heard that Mr. Huguley tried to get it.

Q. Did you ever confer with Col. Hammond as to whether the decree would be taken?

A. Yes, sir; not confer with him. I had a little colloquy with him in court about it.

Q. Well, that company was offered as a security on the supersedeas bond?

A. Yes, sir.

Q. And you objected to it being received?

A. Yes; I stated to the court that it could not go on the bond.

Q. That is a New York corporation?

A. Yes. And the court said he recognized that.

Q. Was there any statu-e in Georgia authorizing it to become surety on bonds in State courts?

A. I don't know. Some of those companies can.

311 Q. There was a proposition to offer this company and you objected to it becoming surety.

A. Yes, sir. I don't think there was any offer or tender of that company as security, but there was a proposition to offer it.

Q. And that was presented to the court?

A. Yes, but I don't think the company had agreed to go on the bond. At least, that was not the statement there.

Q. The proposition was whether it would be acceptable?

A. Yes, whether or not it would be acceptable; we were investigating to see if it would be acceptable security.

Q. And you urged adversely to that?

A. I didn't make an argument. I told the court I didn't think that company could be accepted any way.

Q. You spoke of Col. Hammond having participated in the distribution of the fund realized from the sale; isn't it a fact that the extent to which he participated was as attorney for Mrs. Sallie T. Huguley?

A. Well, in the distribution in that. But he acknowledged service on the motion to confirm, representing the defendants, and I never heard but what he did represent them; I suppose he did.

Q. Weren't you of the legal opinion, up to the time this second appeal was taken, that a second appeal could not be taken after one had been abandoned?

A. Well, yes, I was inclined to that opinion. After an appeal had been entered and abandoned, and the property sold and the proceeds divided, then that no appeal could be taken.

Q. Weren't you also of the opinion, as a lawyer, at that time that

an appeal could not be taken by a party who had permitted a decree *pro confesso* to go against him?

A. Yes, I am of that opinion still, especially as to any matters that occurred in the procedure prior to the decree *pro con-*
312 *fesso*, and I understand the Supreme Court of the United States have so decided. I may be wrong about it, that that appeal would only reach the procedure up to the time of the decree *pro confesso*; that is could not appear on the merits.

Q. As to this distribution and other proceedings subsequent to the decree and sale, Mr. W. T. Huguley was not notified of the facts, was he?

A. No, sir, I do not think he was.

Q. The reason was you relied upon the effect — the decree *pro confesso*?

A. Yes, I don't think the record will show that he was served with notice of the distribution.

Q. Were you consulted by Mr. Lanier prior to the sale and told by him of the arrangement that had been entered into between the bondholders, himself, Dallas and Kirby?

A. Only this, that Mr. Lanier, Mr. Dallas and Mr. Kirby were a committee of all the bondholders, except Mrs. Sallie Huguley and the bonds held by Jannopoulo, and perhaps one or two others?

—. ——.

A. I don't remember. They were the bulk of the bondholders.

Q. They were a committee?

A. Yes, sir; they were clothed with the power to buy the property if the interest of the bondholders required such action.

Q. Did you know of any other property than that embraced in the decree that was owned at the time by the Alabama & Georgia Manufacturing Company? It was, in fact, an insolvent corporation that had gone practically out of existence?

A. Well, it was insolvent; it had been sold in Harris county, in 1890.

Q. Subject to these bonds?

A. Yes, sir; and it had transferred the property to the Huguley Company, and we had sold it out again.

313 Q. It was utterly insolvent?

A. I so understood it. I can say this, that I heard somebody say that the Alabama Company, had some claims against some one in New York for a small sum of money; two or three thousand dollars.

Q. But it was insolvent?

A. Yes, sir. I don't believe that claim ever materialized.

Q. I will ask you now, Colonel, if, in that condition, you would have advised or did advise the Laniers not to buy unless they could be assured the appeal would be abandoned?

A. Well, I did not advise them to buy unless the appeal was abandoned, because, as I understood, the appeal was already abandoned. I was giving advice upon a state of facts.

Q. You did not advise them to buy because the appeal had been abandoned, you state now?

A. That is what I did advise on. I was not advising them at all on the hypothesis which you put in question, but the appeal had already been abandoned. But I tell you frankly, I would not have advised them to have bought it if the appeal had been prosecuted; unless they had bought it for a less sum of money.

Q. Did you know of any other property out of which you could have made that decree?

A. I did not.

Q. It was the only resource?

A. Yes, sir.

Q. You would have advised them not to purchase?

A. I certainly would have postponed the sale, if that appeal had been carried on.

Q. Until it was decided?

A. Yes, sir; that is what I mean.

Q. But was there any other property that you could have made your decree out of?

314 A. None that I knew of; we didn't have any claim against anything valuable except this property.

Q. Your legal opinion, as a lawyer, at that time, was that no right of appeal existed after the abandonment of the first appeal?

A. Well, to be perfectly frank, I didn't go so fully into that, because the counsel representing the case had abandoned the first appeal, and were doing all they could, as I understood it, to make the property sell for all it could, and I didn't consider at the time that Mr. Lanier bid off the property, whether—I had never discussed the question, and it had never crossed my mind whether there would be a right to a second appeal or not, except that Huguley appealed individually, and I didn't think he could appeal, because I didn't believe that when he had a decree *pro confesso* against him he could appeal on the merits.

Q. I understand you to say that if you had known an appeal would have been taken, or could have been taken, you would not have advised the purchase at all?

A. No, I wouldn't say that, because I don't know what I would have done, because it never entered my mind that an appeal would be taken. I didn't suppose a party, after he had a decree against him and had abandoned his first appeal, who stood by and saw the property sold could go and employ other counsel and bring an appeal. I don't know what I would have done.

Q. You didn't ask Huguley, at the sale, or his attorney, Arnold, whether or not they intended to appeal, did you?

A. No, sir.

Q. You didn't ask Mr. Orrick at that time whether he intended to appeal or not?

A. No, sir; but my recollection is that Mr. Orrick told me, after the property was knocked off.

Q. I am speaking of prior to the sale; you didn't ask him anything about that?

315 A. No, sir; I don't think I did. I asked him the night before at the Kimball house. I thought then he was here for the purpose of buying the property for the St. Louis Trust Company, but I do want to state that after the sale was over Mr. Orrick told me he had given up the fight.

Q. Were those his words?

A. That is the substance of it.

Q. Do you remember his words?

A. I don't think I do.

Q. Where did that conversation occur?

A. It occurred either on the sidewalk or on the pavement there in front of the court house, or coming away from there. He and I came away together.

Q. Do you remember who else was with you?

A. No, sir; I do not. I think quite a bunch of us came together. I think Lanier was along. I know I asked Orrick to see me and he said he would come after a while, and did come and pay his respects that evening.

Q. Did you know for whom Col. Hammond bid when he bid? Was it not for Mrs. Sallie Huguely?

A. I think he said that he was bidding to protect her.

Q. Well, his bid was less than the amount of the decree?

A. It was $65,000.

Q. And the next bid by Lanier was principal and interest?

A. I can't remember the figures, but I think it was $66,000.00.

Q. Mrs. Sallie Huguley wasn't a party to this original bill was she?

A. No, sir, she was a bondholder. None of the bondholders were parties.

Q. You say at the Kimball house, the evening before the sale, you saw Orrick, and he told you that the decision beat the record?

A. Yes; that he ought to have won the case.

316 Q. Wasn't that the substance of his conversation?

A. Yes, sir.

Q. As far as it went?

A. Yes.

Q. Do you mean to say that before Mr. Lanier bought you went over with him and mentioned all the details of these different conversations you had with Orrick and with Hammond and all these people?

A. I didn't say anything to him about what Orrick said. As I now remember, Dallas argued against the bid, and while they were trying to make up their minds about coming in and bidding for the property, the question came up as to whether Nat Hammond would give any more trouble, and Lanier and I both told him that Hammond said there would be no more trouble.

Q. Did Col. Hammond ever tell you there would be no appeal in this case?

A. No, sir; I don't say that. I said that Hammond said the purchaser would get a good title, and that is what we told Dallas.

Q. Did you go to Col. Hammond, the attorney on the other side, to determine whether the purchaser would get a good title or not?

A. No, sir.

Q. He was the opposing lawyer?

A. Yes; he was there in both capacities I understood.

Q. Did you go to him to advise you whether or not you would get a good title at the sale?

A. No, sir; I am not in the habit of doing that. He said the fight was over and there would be no more litigation about it.

Q. When did he tell you that?

A. He told me that at least a month before the sale.

Q. Where?

A. He told me that in the Gate City Bank building.

317 Q. In whose presence?

A. Nobody but himself and I.

Q. In his office?

A. No, I think we were going up in the elevator at the time. I had an office in the rear of the building and his office was in front, and I think we started down in the elevator together.

Q. Was it running or standing still?

A. I don't remember. I think he told that in my office. It was well understood by Mr. Hammond.

Q. How did he happen to say it to you twice?

A. We were just talking about it.

Q. Did he come and say to you the second time that there would be no further fight.

A. No, sir. He first said his impression was there would be no appeal.

Q. Isn't it a fact he told you the parties were unable to give the bond, and for that reason he thought there would be no appeal?

A. No, sir; he didn't say that.

Q. Didn't he, in connection with what he told you, tell you that the parties had been unable to make the bond?

A. No, sir; he didn't say that. He said Jannopoulo wouldn't make it.

Q. Didn't he tell you further that unless they paid him an additional fee he wouldn't appeal?

A. No, sir; he didn't tell me that. Col. Hammond is very reserved, you know, about whether or not he gets his fees. He doesn't go around telling people.

Q. Didn't he tell you that unless Huguley paid him a fee he would not appeal?

A. No, sir; he did not tell me that. He didn't tell me he represented him, or ever had; he always said he never did.

318 Q. You bought, after the notice from Huguley, given at the sale by his attorney, and didn't enquire at all?

A. I made no inquiry. I thought the parties to the litigation were satisfied.

Q. Wasn't he a party to the litigation?

A. I didn't consider him an active party.

Q. Did you have any assurance from him, before you bid that he wouldn't appeal?

A. I never did. I never asked him.

By Mr. BREWSTER:

Q. Well, do the pleadings disclose that W. T. Huguley had any interest in that matter as an individual, at all?

A. None on earth, as I remember.

Q. He was simply a member of the Huguley Manufacturing Company?

A. Exactly, and the record shows—I don't think a portion of the record was up here. I don't think Buck's report went up; anyhow we didn't have Hammond's statement before the court; didn't have what he represented about the party getting a good title.

Q. Everything that appeared upon the face of the record you had there?

A. I presume we had all of the record there, but I think may be Buck's final report was not there, because he made it afterwards.

Q. He made it after the appeal?

A. Yes, sir; and it never went up. *You will find it there; it is in writing.*

F. A. ARNOLD, being next duly sworn, deposed as follows:

Direct examination by Mr. ABBOTT:

Q. You are an attorney at law at this bar?

A. Yes, sir.

Q. Were you present at a sale of what is known as the Ala-
319 bama & Georgia Manufacturing Company property, before the court house door of Fulton county, on the first Tuesday in September, 1892?

A. I was present at a sale before the court house door of Fulton county in a case in which Mr. Huguley was interested; the name of it I do not exactly remember: nor the date of it.

Q. Did you prepare and read a notice to the public, before the sale began, for Mr. Huguley?

A. I did.

Q. Where is that notice?

A. I do not know.

Q. You haven't it have you?

A. I think not.

Q. When did you last see it?

A. I do not remember to have seen it since I read it on that occasion.

Q. It was a short notice, was it?

A. It covered, according to my recollection, about a page or less.

Q. What was the contents of that notice? If you can not give the exact language, give the substance? give the contents of the notice as near as you can recollect it?

A. I don't remember the contents of it.

Q. Well, what was it about?

A. I don't remember the details of the notice, unless my memory could be refreshed by the paper, or by calling my attention to its recitals.

Q. Did or not that paper purport to put the public on notice of a claim on anybody, and if so, on whom, as against the property about to be sold?

A. I think it did purport to put the public on notice of a claim of Mr. Huguley about something; the details of which I do not now recollect.

Q. Was anything said about W. H. Huguley & Co.?

320 A. My recollection is it was the firm of W. H. Huguley & Co.

Q. What property did it refer to?

A. That referred to the property about to be sold. The notice was in reference to the property then offered for sale.

Cross examination by Judge CHILTON:

Q. You say you could not be positive about the contents of the notice?

A. No, sir; I have no recollection of the contents of the notice.

Q. It was a notice to bidders at the sale, and was read by you as an attorney representing Mr. Huguley?

A. Yes, sir; that is right.

Q. Mr. W. T. Huguley was the one who requested you to make the announcement?

A. This gentleman here (indicating) yes.

Q. Was there any question asked you by Lanier or others as to what the paper was about, after it was read? You just read it and stopped, and that was the end of it, was it? There was no inquiry as to it?

A. I don't remember any inquiry having been made of me by anyone, at the time the notice was read. Mr. Huguley came and got me to prepare a notice and read it, and it just passed out of my mind. I didn't get any fee for it, and it just ended there; it didn't make any impression on me at all. I am sorry I cannot give you mor definite information about it.

The foregoing depositions were taken before me, as stated in the caption, and the answers reduced to writing by me, and I certify

that I am not interested in the cause, nor of kin or counsel to either of the parties.

[SEAL.] H. L. PARRY,
Commissioner.

321 UNITED STATES OF AMERICA,
Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To Z. Hagedorn, H. F. Woodyard, E. B. Reed:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, *et al.* and Huguley Manufacturing Company.

And whereas, W. T. Huguley is a material witness in said suit on behalf of the dependant and cannot attend said circuit court in person without manifest inconvenience.

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said W. T. Huguley personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of May, 1894.

[SEAL.] O. C. FULLER, *Clerk*,
By GEO. S. BARNARD,
Deputy Clerk.

Deposition of W. T. Huguley.

In the Circuit Court of the U. S., Northern District of Georgia.

J. J. ROBINSON, Trustee, etc.,
vs.
HUGULEY MFG. COMPANY ET AL.

Petition of defendants to vacate sale and for accounting of purchasers.

322 Interrogatories propounded *by* W. T. Huguley, a material witness for petitioners in the above entitled cause, the answers to which to be read upon the hearing of the petition.

Interrogatory 1. Where do you reside?

Interrogatory 2. What business connection, if any, have you had with the Alabama & Georgia Manufacturing Company? Were you

acquainted or not acquainted with the physical condition of the factory of said company while the same was operated by the Alabama & Georgia Manufacturing Company, and while the same was operated by the Huguley Manufacturing Company? Describe said factory buildings with respect to machinery that could be placed therein.

Interrogatory 3. At what date did the Huguley Manufacturing Company take possession of said factory? Describe the physical condition of the property at said date including the main factory building, and all of the buildings used in connection therewith? How many looms were there in said factory building? How many spindles? How many cards? Describe fully all of the machinery in all of the buildings? How long before said date had any new machinery been purchased? Within a period of eight years next before the Huguley Manufacturing Company took possession, what addition had been made to the machinery and betterments of said factory? If any such additions were made, state in what they consisted each of the said eight years, that is to say, describe what machinery and betterments were added each year, and costs of same.

Interrogatory 4. Are you familiar or not familiar with factory machinery and the operation thereof? State your experience in said matters? How long have you been engaged in manufacturing?

Interrogatory 5. What was the character of the goods manufactured by said factory, that is to say, was it duck, sheeting or of any other quality? What was the physical condition of the mill with respect to capacity to make goods at the time the Huguley
323 Manufacturing Company took possession, and in respect to the quality of the goods it was then capable of making?

Interrogatory 6. What addition or repairs, if any, were made to the plant and machinery of said factory while same was in the possession of the Huguley Manufacturing Company, and at what costs were the same made? State whether while the Huguley Manufacturing Company were in possession, the capacity of said plant and machinery was increased, and if so, state how, and to what extent? State fully the physical condition of said plant and machinery at the time same was purchased by Lanier, Dallas and Kirby, under the order of the sale? How did said condition compare with the condition of said plant and machinery during the administration of the Alabama & Georgia Manufacturing Company and how did its capacity compare with its capacity under said former administration? At the time said Dallas and others purchased, state whether the mill was in full operation? With reference to operatives, state whether there was a sufficiency, and where they resided?

Interrogatory 7. State whether or not there are automatic sprinklers in the Alabama & Georgia Manufacturing Company mills? If so, when were they placed there? What was the rate of insurance before the application of said sprinklers, and what has it been since?

Interrogatory 8. Who was president of the Alabama & Georgia

Manufacturing Company when it was sold under the decree in this cause? Who is president now? Did you give or cause to be given any notice at said sale? What was that notice in writing? To whom did you deliver it? State the purport or substance of that notice. In making said notice, whom were you representing? Were you interested at said time in the Huguley Mfg. Co.? Did you at said time hold any official relation with it? If you say such notice was given, state who made the announcement. Was or not, said paper read at the time of said public sale, and in the presence
324 and hearing of all persons present? State whether or not you had at or before said sale, or afterwards ever stated to any person that you or the Alabama & Georgia Mfg. Co., or the Huguley Mfg. Co. had ever abandoned the right to appeal said case. Whether or not you had ever authorized any one to make any such statement. State whether or not John C. Orrick or N. J. Hammond made any statement at said sale, that the right to appeal had been abandoned, or that the same would not be prosecuted. What effort, if any, did you make to give supersedeas bond as required by the court at the first appeal, and how long did such effort continue after the date of the decree under which sale was made? State whether or not you voluntarily abandoned the first appeal, or whether the failure to prosecute was from inability to give supersedeas bond.

Interrogatory 9. Were you present or not at a sale of the said Alabama & Georgia Mfg. Co., made under the decree at Hamilton, Ga., January, 1890? What did said property bring at said sale? What was the next highest bid to price called, and by whom was it made? How was it payable, in money or in bonds? Was such sale subject or not to any incumbrance? If so, how much? How did the physical condition of said factory and its machinery compare at the date of said sale, with the sale under the decree in this cause? After the purchase at the sale in Hamilton, how much, if anything, was added in the way of machinery and betterments before the sale under the decree. What was the value of such additions?

Interrogatory 10. Was there any insurance or not on the main building of said factory and machinery therein contained, on July 1, 1890, January 1, 1891, and on the date of the sale under the decree in this cause? If so, state the amount at each of the dates. What was the difference at said dates, between the actual and insurable value of manufacturing plants such as this?

325 Interrogatory 11. State whether or not the Alabama & Georgia Mfg. Co. (or Huguley Mfg. Co.) has been kept steadily in operation throughout the whole time since September 6th, 1892, up to date.

Interrogatory 12. State what is the customary charge or estimate usually allowed by the cotton mills of the country for the items of "wear and tear," or depreciation in machinery and plant.

JOHN M. CHILTON,
JOHN C. REED,
Solicitors for Petitioners.

Cross Interrogatories to be Submitted to W. T. Huguley.

1st. Where was the factory, the Alabama & Georgia, and which is now in dispute, built? Has the size ever been increased? At first, was it filled with its compliment of machinery, such as spindles and looms, etc.?

2nd. After being first supplied with machinery, was that machinery or any of it ever removed? Be so kind as to give us a detailed statement of the number of spindles and looms originally placed in the factory? And if any of them were ever removed, how many of each and when, and what became of such as were removed?

3rd. How many spindles were afterwards added? How many looms, and give exact date when each were added? Was any machinery removed to make room for this new machinery?

4th. How many spindles and looms were there in this factory at the time of the sale when bought by Lanier, Dallas & Kirby?

5th. What does it now cost to build and place with its compliment of all necessary machinery a cotton factory, per spindle? That is, suppose you should build a factory with a capacity of 10,000 spindles, with the necessary looms and all other proper
326 machinery for such a plant, how much would the whole thing cost, estimated by the spindle? Would it cost $20, $30, $40 or $50 per spindle. Will you please state what was the estimated cost of a cotton factory per spindle at the date of said sale?

6th. After said factory went into the hands of a receiver in 1888, no other machinery was placed in it by the receiver up to date of its sale, was there? If so, what receiver and when and what kind of machinery? If any has been placed in there since the appointment of a receiver up to this date it was placed by Huguley Manufacturing Company, was it not? Now if Huguley Manufacturing Company placed any new machinery after it began to operate the factory, what did they put in it? When did they put it in, and from whom did they purchase it?

7th. You had the management of this factory from about 1880 to some time in 1888, did you not? During that period the factory was either a very poorly equipped concern, or it was badly managed, was it not? For it is true, is it not, that — it went into the hands of a receiver in 1888, it owed over and above the bonded debt, as you claimed, of almost $200,000.00? If not, what amount did you claim that it owed? How much did it owe you, your father, and your firm, W. H. Huguley & Company?

8th. In the suit brought by Robinson in the Federal court to foreclose the deed to secure the bonded debt, you were made defendant, being one of the trustees, were you not? Did you employ any lawyer to represent you in that case, or did you ever file any answer? As to you *were* there not taken a judgment *pro confesso?* What interest did you ever set up in that suit that you had in that

litigation? If you had any, you did not have it represented, did you?

9th. The Alabama & Georgia Manufacturing Company had no interest in that litigation, did it? Was not all its interest sold under a decree at Hamilton, Harris county? Do you not know that the only person interested in the property at the time of the sale,
327 under the decree obtained in the Federal court, was the Huguley Manufacturing Company, and such as said company owned?

10th. If you say you had any interest in it or W. H. Huguley & Company was it not an interest growing out of a contract with Huguley Manufacturing Company. If you or your firm claim any interest in said property, attach the contract under which you claim such interest?

11th. If you say you gave or had given any notice of any kind at the sale in Atlanta, whom did you represent in giving such notice? If you represent anybody except yourself and your firm, attach the authority by which you acted for any one else but yourself and firm?

12th. If you say you gave any notice at the sale, who read it, who prepared it, what did it contain?

13th. Were Col. N. J. Hammond and Mr. Orrick present at that sale? Did you not have your notice written on paper with Col. Hammond's letter-heads, and did he not tear it off and tell you you had no right to make such use of his letter-heads?

14th. Why did you employ Col. Frank Arnold to write and read such notice? Did not Col. Hammond and Orrick represent Huguley Mfg. Co., and one or both of the bond holders, of the bonds issued by Huguley Mfg. Co.? Why did you not get them, or one of them, to give the notice? Did you not try to get Col. Hammond to give the notice, and he absolutely declined? If not, why did you not have him to give the notice you got Arnold to give?

15th. What is the estimated life of cotton machinery, *i. e.*, how many years is — estimated cotton machinery lasts? What per cent. of its value is reckoned as loss annually?

16th. Who is now paying the expenses of carrying this litigation on on your side, and who is to pay it? If you have any written obligation of any kind from the Huguley Mfg. Co., binding it
328 to pay any of said expenses, attach it to your answers. If none by it, then if you have any such written obligation from any person or corporation or company to pay any of these expenses, attach such writing to your answers. If anybody has undertaken to bear any of such expenses by writing or verbally, state who such person is.

17th. Is it not true that you and your firm alone are carrying on this litigation, and you only have the privilege of using other names on condition that you are to assume all expenses?

B. F. ABBOTT & SON,
DORSEY, BREWSTER & HOWELL,
Defendants' Attorneys.

In the Circuit Court of the U. S., N. Dis. of Ga.

J. J. ROBINSON, Trustee, &c.,
vs.
HUGULEY MANUFACTURING CO. ET AL.

Petition of defendants to vacate sale and for accounting of purchasers.

By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, to us directed we have caused WM. T. HUGULEY, the witness in said commission named to come before us, and being duly sworn, true answers to make to the interrogatories to said commission annexed, deposes and answers as follows—

To the first interrogatory he answers:

Interrogatory 1. I reside in West Point, Ga.

Interrogatory 2. From 1880 up to 1886, I was vice-president and agent, also a director. In 1886, I was elected president. In 1882, my firm, W. H. Huguley & Co., who owned about half the stock became secretary and treasurer of the corporation.

In one or the other of these relations, I have had virtually complete control and management of the business from July 1,
329 1882, up to July 1, 1888. Pending the receivership, other than as a director, I had no official connection with the Alabama & Georgia Mfg. Co., until the same was succeeded in 1890 by the Huguley Manufacturing Company.

I was acquainted with the physical condition of said factory property at the time referred to. The main factory building is a massive structure, 4 stories and attic. The base is of stone and the four upper stories are of brick, with a strong partition or fire wall. Dimensions of main building 60 x 220 feet. Roof of tin. Built in 1868. Original cost (about) $75,000.

Picker house of stone complete. Two stories and basement. Roof of tin. Dimensions 60 x 80 feet. Built in 1883. Original cost (about) $10,000.

Warehouse and mixing room of brick cost (about).....	$2,000
1 office and supply house of stone cost (about)	1,000
1 store of brick cost (about).....	2,000
1 superintendent's dwelling of brick cost (about)	2,500
1 boiler house, pump house and outer houses cost (about)	2,500
60 operative houses—4 rooms each cost about $350 *at* $400, each.....	25,000
Total cost of buildings.....	$120,000

As to the capacity of said buildings, with respect to the machinery that could be placed therein, in addition to the present line of machinery now in operation, say 208 looms and 7,000 spindles, and complete outfit, there still remains floor space water power under control ample to accommodate about 700 more looms and about 5,000 more spindles, together with complete equipment.

Interrogatory 3. The Huguley Manufacturing Company succeeded to the property in 1890.

The main building was erected in 1866, and no pains nor expense originally having been spared in its erection, was found to be
330 in excellent physical condition, barring the basement floor which had decayed for lack of use. The roof had also become impaired. The picker building, also a substantial structure, needed reflooring, and the water house, dams, &c., were in a bad condition.

All the outer buildings, such as warehouse, residence and operative houses (about 60 in number) were in fair condition, but showed the usual neglect of repairs incident to the receivership, and the actual stoppage for the six months preceding.

In January, 1890, when the Huguley Manufacturing Company took possession of the property, for prudential reasons and as a matter of reference in the event of fire, I caused to be made a careful inventory of all the machinery and appurtenances thereunto belonging. There were at this time in said factory buildings 208 looms, 7,000 spindles, 74 cards together with the complete outfit of machinery accompanying same.

For the full description called for under this interrogatory, I attach herewith, as part of my answer, copy of said inventory, marked "Exhibit A" which is a duplicate of the inventory made in 1890 by Higginbotham, Brown & Nolan.

Prior to said date, January, 1890, the records show that new machinery and betterments were constantly added from year to year throughout my administration up to as late as 1888.

In 1880–1, when I first became actively identified with the property, I found in operation only 96 looms and about 3,500 spindles and outfit, with a capacity of only six and seven bales of cotton and an output of say 5,000 and 6,000 yards cotton duck per day.

With a superabundance of floor space, water power, etc., at command to utilize same, we first purchased in 1881–2 enough new machinery to bring our capacity up to the following basis:

128 looms.
331 36 Foss & Pevey cards.
19 roller cards.
5,500 ring spindles.
360 spooler spindles.
7 slubbers.
4 warpers.
3 roving frames.
2 Howard & Bullough slashers.

To accommodate this new line of machinery, we had to provide,

at great expense, a new water house, new water-wheels, and a large amount of new supplies and findings. A large number of new operative houses were built, the dam repaired, etc. The entire cost of all this new machinery, new supplies and the necessary betterments approximated $55,000 or $60,000.

Of the machinery, we paid only $10,000 cash down, and gave our notes for the balance to the Bridesburg machine shops and others amounting to say about $40,000. These notes matured 6, 12, 18 and 24 months respectively, and were all subsequently retired by me out of the profits.

The next important purchase of machinery was about July, 1883, when we applied the following:

1 lapper	$1,150
7 cards	2,450
2 drawing frames	600
2 spinning frames	1,224
1 slubbing frames	708
	$6,132
To the latter ($6,132) add for freight setting up, new supplies, new operating houses and other betterments	$6,000
We also built a new picker house 60 x 80 feet and other houses	12,000
Total expenditures for 1883	$24,132

332 I note further remittances for new machinery as follows:

July, 1883	$5,156.14
October 9, 1883	6,677.20
January 1, 1884	2,000.00
May 5, 1885	1,400.00
August 4, 1885	1,357.86
August 4, 1885	1,413.00
September 24, 1885	7,500.00
October 12, 1885	1,500.00
April 26, 1886	2,000.00
Total	$29,004.20

Of course, in nearly every instance where new machinery was added, an expenditure of large sums for additional operative houses, water power, etc., became necessary.

The next important purchase and the last during my administration, was on November 2, 1887, when we received the following new machinery:

44—36 looms.
8—40 looms.
1,600—warp spindles.

400—speeder spindles.
1 speeder of 120 spindles.
1 spooler of 80 spindles.
8 John Elce & Co. roller cards—45 x 36, together with slubbing, roving, etc.

This last lot of new machinery, together with all necessary supplies, findings and betterments, freights, etc., cost about $30,000.

Thus it will be seen that within the six years of my administration, the facts are that new machinery, betterments, etc., were applied at an aggregate cost of about $115,000 or $120,000, all of which was duly paid for by me.

Interrogatory 4. While not an expert machinist, I am quite familiar with factory machinery and the operations thereof.
333 I have made the business a study for the past fifteen years, within which time I have thoroughly posted myself not only as to the latest and most improved patterns and inventions on the market, but have likewise qualified myself to judge as to the quantity and quality of goods said machinery can and ought to produce, as well as the cost of manufacture thereof.

Interrogatory 5. Originally and prior to 1880, the mill had been equipped essentially as a sheeting mill.

In 1880.—1, the organization of the plant was entirely changed, and while still adapted to the manufacture of sheetings, at great outlay, the plant was equipped especially with an eye solely to the manufacture of cotton duck.

As an adjunct, (and one of the most profitable), the mill was also equipped for turning out a large amount of cotton batting.

In consequence of the receivership, which dated from Oct., 1888, the improvements and betterments, which for years prior thereto had been steadily going on, necessarily were ceased, pending the receivership, little or no new supplies and findings &c., were purchased even during the time the mill was kept running, and finally about June, 1889, by reason of certain attachments levied on the "quick assets" of the receiver (at that time amounting to about $25,000), the receiver was compelled to close down the mill. The cessation of all active operations for more than six months (*i. e.* from June, 1889, to January, 1890), had the effect to disperse the operatives; the machinery, for lack of use became rusted; the roof of the main building became impaired: the water house, dam, &c., were broken; and all the operative houses and other buildings bore the air of neglect and general need of repairs incident to such stoppages.

Interrogatory 6. Immediately after the sale at Hamilton, Ga., in January, 1890, and the pending organization of the Huguley
334 Manufacturing Company, my firm W. H. Huguley & Co., took charge of said property, and at an outlay of several thousand dollars, again re-assembled an adequate force of operatives, and employed them assiduously in restoring the mill and its surroundings to good running order. The Huguley Mfg. Co., being

organized shortly thereafter, continued the work of repairs. The dam was repaired; a new water house was put in; the roof of the main building was renovated; three new operative houses were erected; and all the others, (about 60 in number), were repaired; the basement floor of the main building and the floor of the cloth room were underpinned and renewed. Besides these general repairs, B. F. Gambrill an expert cotton duck manufacturer and mill engineer, was retained, and under his supervision, Logan Owen, superintendent, aided by John T. Higginbotham, organized a force of machinists, and at a cost of $400 to $500 per month, were kept repairing and polishing up the machinery for months, indeed, up to September, 1892, when we were compelled to vacate under order of court. All the cards were refitted with new card-clothing, and numberless pieces of new machinery, fixtures and improvements were added. New supplies and findings were purchased, and in short everything else contributed to make the machinery as efficient as possible.

Notably, one of the biggest improvements instituted consisted in the thorough overhauling of all the English spinning frames (about 2,000 spindles), which by the application of a new device, increased their revolutions 50 per cent., and made them as efficient as the latest, improved spinning. In addition to this, all the new machinery which had been bought, in 1887-8, including the 12-40" looms were applied, together with the 40-36" looms and outfit. All these repairs, new machinery, betterments etc., were accomplished at an outlay of $15,000 to $20,000.

During the administration of the Huguley Mfg., Co., new supplies and findings were purchased at a cost of $11,000.

335 From the foregoing it will be seen that from the date they succeeded to the property in January, 1890, the steady purpose and policy of the Huguley Mfg. Co. was to bring the mill up to the highest standard of efficiency. I can therefore answer of my own knowledge, that at the time of the sale under the decree of Dallas, Lanier & Kirby, the physical condition of said plant and machinery was most excellent.

As more than half of the machinery had been applied within an average of 4 or 5 years, and much of it as late as 1887–8 all at a cost exceeding $100,000 with the overhauling mentioned, the equipment on Sept. 6, 1892, as an entirety, was wellnigh modern, certainly, for the purposes designed, was well capacitated to turn out "a maximum production at minimum cost."

As compared with the condition of the plant and machinery during the administration of the Alabama & Georgia Mfg. Co., particularly during the interim of the receivership, the condition and capacity of the Huguley Mfg. Company's plant at the time they vacated on Sept. 6, 1892, was decidedly better than it had ever been, by experts, such as Owen, Higginbotham and others, reckoned at 25 *to* 100 *per cent. better.*

As nearly as I can approximate, the increased efficiency and ca-

pacity of the plant, as a whole, on Sept. 6th, 1892, was 40 to 50 per cent.

Up to Sept. 1st, 1892, we kept the mill in full operation. In anticipation of the sale fixed for the 6th Sept. the Huguley Mfg. Co. then closed down the mill, and leaving in the custody of the supt. (Higginbotham), a large amount of supplies and findings, and other "quick assets," we withdrew from the field.

At the time of closing down (Sept. 1), there was a sufficiency of operatives, all of whom resided at the mill, and continued right along in the employ of the new incumbents.

336 Interrogatory 7. There are automatic sprinklers in the mill.

Formerly, on the line of $200,000 of insurance carried by us, we had to pay the rate of $1.40—$2,800 per annum.

The complete system of automatic sprinklers, new steam fire pump, tank, etc., were applied in 1887 at a cost of $4,000 to $5,000. In return for this expenditure the South-Eastern Tariff Association rated the mill "standard," and accorded us a rate of only 55-100 per cent., or within 5-100 per cent. of the lowest rate accorded any standard mill. This alone reduced the insurance and effected a saving of $1,700 per annum.

Interrogatory 8. W. H. Huguley was the president and is now.

I did give such notice. Mindful of the appeal to be prosecuted, and acting upon the best legal advice, immediately after A. E. Buck concluded reading the advertisement of sale which had been appearing over his signature as "U. S. marshal," and just before he proceeded to cry off the property, standing by his side, I caused to be distinctly read aloud in the presence of all hearers, among whom were Lanier, Dallas and Kirby, the committee representing the bondholders, the following: "This property, be it understood, is sold subject to any and all claims and equities of W. H. Huguley & Co. or the Huguley Mfg. Co. on or in this property, and they hereby publicly announce that they reserve any and all rights to contest or attack this sale on any and all grounds." This announcement was read by Mr. Frank Arnold, attorney, and I thereupon handed same to Col. Buck, with request that it be preserved. At the time of said sale, I was interested in the Huguley Mfg. Company in the relations of a director, and as chairman of the auditing committee, of which our attorney, Judge Chilton, was the other member. As such in making said notice, I was representing.

1. The Huguley Mfg. Company, by virtue of certain under-
337 standings and resolutions of the board of directors at certain meetings in St. Louis, called by the president of the company in April, May and June preceding the sale of Sept. 6th, 1892, said meetings having been called for the express purpose of providing to meet the issues precipitated on the company by the adverse decree.

2. My father, the president of the Alabama & Georgia Manufacturing Company, whose power of attorney or proxy I have been acting under for many years.

3. Also, I was further representing my firm, W. H. Huguley & Company, who at the time (September 6th, 1892) owned nearly every dollar of the capital stock of $200,000 of the Huguley Manufacturing Company, who, therefore, for no fault, nor neglect of their own, were about to be made the innocent and sole sufferers under said sale.

4. Lastly, *myself*, as one of the trustees of the first mortgage bondholders.

Neither at, nor before said sale, nor afterwards, have I ever authorized or stated to any person that I, or the Huguley Manufacturing Company, or the Alabama & Georgia Manufacturing Company, had ever abandoned the right to appeal said cause. Nor did I ever authorize anyone to make such statement. Nor did John C. Orrick nor N. J. Hammond make any such statement at said sale. On the contrary, from what transpired in the director's meetings in St. Louis in April, May and June preceding the sale, said Orrick well knew that, as Mr. D. Jannopoulo, *individually*, refused to take any steps towards making the supersedeas bond or to pay the further fee being then exacted by N. J. Hammond, W. T. Huguley and Judge J. M. Chilton (himself a director) did then and there undertake to make supersedeas bond and to represent the Huguley Manufacturing Company in the prosecution of said appeal. Col. Hammond was likewise apprised of these facts, and it was only due to Jannopoulo's refusal to advance further fees that he dropped out of the case.

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I never, at any time, voluntarily abandoned the first appeal. Our failure to prosecute it was from sheer inability to make other than the supersedeas bond, as explained (*i. e.* by the American Surety Company). Our inability grew out of the following facts:

1. Because we had turned over in 1888 to Fisher, the receiver of the Alabama & Georgia Manufacturing Company a large amount of "quick assets" (about $40,000) in self defence having the following order of court (May 22nd, '89) passed:—"*Said Fisher, receiver, shall promptly pay the past due interest, and the interest to accrue, when due, on the first mortgage bonds of said corporation out of any funds he may have while he remains in office.*"

The receiver thus charged with this particular duty, did pay said interest and continued to act under said order up to date of said alleged default, and it is now insisted that said receiver *had in hand on the date of said alleged default ample cash funds with which to pay said interest*, and he undoubtedly would have paid said interest had proper demand been made on him. It was his duty as the only legal representative (except the president) of the Alabama & Georgia Manufacturing Company to pay said interest and failing to have done so, he should have taken steps, with the funds in hand, to have aided in making the supersedeas bond and thus averting the foreclosure. Though importuned to do so, he took no steps to carry out said original order of the State court and thus the funds in his hands were not available in the protection of his said trust.

2. So also, my hands were tied in another direction. Under a certain lease contract, I had resigned the presidency of the Huguley Manufacturing Company and transferred to D. Jannopoulo, St. Louis, all the "quick assets" of the company, it becoming incumbent upon him, in turn to *keep the mill a "going*
339 *concern" to meet all its current expenses, and especially take care of the interest on the bonds.* This contract was made in 1890 and expired by limitation in 1893. Said Jannopoulo is a foreigner, and little versed in matters of law,—besides owning but a few shares of stock in the company. (40)

Hence, on going to St. Louis in April, 1892, to confer with him about making the supersedeas bond, Judge Chilton, another stockholder and director accompanying me, we found said Jannopoulo seemingly so disheartened at the adverse decree, that in face of the express terms of his contract, and his duties thereunder, and despite the fact that *he held large amount of "quick assets" belonging to the company,* (against which he claimed advances,) he absolutely refused to take any steps whatever to protect the company either by making the bond or paying Col. Hammond the fee exacted for continued services in prosecuting the appeal.

Having exhausted our efforts in this quarter, I went to New York and made application to the American Surety Company, of which Messrs. N. J. & T. A. Hammond were attorneys for Georgia. The negotiations in behalf of the surety company were conducted with me solely by Mr. Van Renssaler, head counsel. The outcome was that for a moderate charge, Mr. Van Renssaler entered into and signed up with me an *unconditional written contract* that his company *could* and *would* make the supersedeas bond. Pursuant to this contract, Messrs. Hammond were authorized to tender such bond to the amount even of the 1st mtge. bonds ($65,000) if necessary Mr. Van Renssaler giving me an affidavit of the financial condition of his company, together with a formal agreement to be tendered to the court. Meantime Col. Hammond advised that he had secured a reduction of the amount of the bond to only $10,000, whereat Mr. Van Renssaler expressed himself even more pleased to undertake the commission, which he promised me faithfully to have carried out. At no
340 time was any collateral enacted as a condition precedent to making said bond and no such stipulation appeared in the contract. When asked why so moderate in his charges (*only* $350.) Mr. Van Rensslaer replied, "Because I have read the record in your case and you are sure of a reversal, besides, we incur only the trifling risk of actual court costs, and we always gauge our charges in promotion to the risk incurred."

Relying upon these assurances, I sailed by Savannah, arriving in Atlanta only a few days before our limit expired. I was amazed to learn from Col. Hammond that the bond had been rejected, and promptly wired the American Surety Company:—

"*Bond for* $10,000 *declined, grounds non-residents. Have written contract with Mr. Van Renssaler to make bond; answer.*" To this Mr.

Benedict, assistant counsel, answered that Mr. Van Rensselaer had sailed for Europe, but proposing to make bond if secured, by indemnifying resident surety, but on my consenting to hypothecate all the collateral we had, it developed that said collateral was not satisfactory as I had already ascertained was the case with those in Atlanta to whom I had applied. Indeed, before I could have time to move in the matter, our limit had expired.

Throughout the whole time, I was pressing Mr. Jannopoulo as a dernier recourse, to deposit in Atlanta a certificate of deposit for the $10,000, at any sacrifice to my corporation, by way of indemnity for the supersedeas bond, but he utterly refused to come to my rescue and I was powerless. The attached correspondence, marked "Exhibit G" will show what herculean effort I made in the premises.

In conclusion it is proper for me to explain that *because of the order of the State court, I had to transfer to the receiver about* $40,000, *of "quick assets" and in view of the special order of court charging him with the particular duty to pay said interest and knowing he had*
341 *ample cash in hand, I specially relied on him to meet the interest otherwise and take such steps as would protect his said trust under the circumstances.*

Being "tied up," as explained, both through the receiver and the contract with said D. Jannopoulo, and embarrassed by the litigation, my firm and corporation were so "handicapped" that I could not make the supersedeas bond locally, particularly within a day or two allotted me after ascertaining the surety company's bond had been rejected.

Interrogatory 9. I was present at the receiver's sale at Hamilton, Ga., in January, 1890. The property was then sold as follows:

1. Subject to the 1st. mortgage bonds.....	$65,000
2. Subject to certain Alabama executions in favor of Bank of Lafayette, Doss *et al.*, now owned by us (about).....	16,000
3. Executions in favor of W. H. Huguley & Co., considered as cash.....	56,880
4. Cash from W. H. Huguley & Co.,.....	12,120
Total cost (as to Huguley Mfg. Co.).....	$150,000

The next highest bid was within $500 of the bid at which the property was knocked down. *It was made by L. Lanier, presumably for the Lanier-Boynton syndicate,* and had it prevailed, they would have assumed

1. The first mortgage bonds.....	$65,000
2. And then had to pay cash.....	84,500
Equivalent to cash bid of.....	$149,500

Under interrogatory-s 5th and 6th, I have already testified that the physical condition of the property on September 6, 1892, had

been improved 40 or 50 per cent. over the physical condition at the time of the receiver's sale in January, 1890, and at that about $20,000 of improvements had been added by the Huguley Mfg. Co., between said dates.

Interrogatory 10. On each of said dates, viz: July 1, 1890,
342 January 1, 1891, and September 6, 1892, respectively, we were carrying on the main building and machinery therein, alone, in the best stock companies *insurance*, to the amount of $200,000.

I attach hereto, marked "Exhibit H" the pages 44–47–48 from the printed record in this cause, which contain extracts from the testimony of M. B. Torbett, confirming the amount of insurance carried and likewise proving that the first $65,000 of said $200,000, had been duly and properly set apart in favor of the first mortgage bondholders.

The difference, at said dates between the *actual* and the *insurable* value of such cotton mill properties is always 15 to 20 per cent. in favor of the *actual* value; that is to say, that much margin above the *insurable* value being required. This was the basis upon which our property was estimated by Mr. Torbett, and all the other insurance experts whose particular business it was to visit and inspect the mill from time to time. (See printed record, Torbett's testimony, page 44.)

Interrogatory 11. The mill has been kept steadily in operation throughout the whole time, since September 6, 1892. However, formal notice has just been given to the operatives by the present incumbents—(the Galeton Cotton Mill Co.,) that the mill will be closed down indefinitely on June 1, 1894.

Interrogatory 12. The customary charge or estimate usually allowed by the cotton mills of the country for "wear and tear" or depreciation in machinery and plant, as a rule depends upon the conservatism of the individual manufacturer, and upon the speed of the machinery operated. All the Fall River mills uniformly allow 8 per cent. per annum on the actual cost of the machinery and the New England mills generally, charge off at least 5 or 10 per cent. per annum, before declaring dividends. The Eagle & Phœnix mills, of Columbus, Ga., the six large mills of Augusta, Ga., and all
343 the leading mills of the South allow at least 5 per cent. for "wear and tear" or depreciation.

Those mills which make no special allowance of a percentage for "wear and tear" *invariably must spend the equivalent in substantial improvements or new machinery each year else such properties rapidly run down.* Many mills in the South adopt this plan of adding machinery and improvements annually in lieu of keeping such "wear and tear" accounts.

Answers to Cross Interrogatories.

Interrogatory 1. The factory (main building) was built in 1866. Subsequently, in 1883 there was erected a pickerhouse say 60 x 80 feet as an annex or extension, though 18 feet distant.

Interrogatory 2. At first, only 50 looms and complete outfit for the manufacture of sheeting were applied. Later on 50 looms and equipment more were added, and this 100 looms and about 3,500 spindles and complement of other machinery constituted the entire equipment until I became identified with the property in 1878. The mill was therefore not filled, having originally been constructed with an eye to accommodating about 300 looms and 10,000 spindles, and outfit.

With the exception of the removal of about 2,000 old (English) spindles, and the substitution therefore of the same number of new spindles, I do not think there has been any further removal of any of the machinery until the Galeton cotton mills (the present incumbents) took charge. I am informed that *they remove from the premises 40 or 50 of the looms but have replaced only eight of the number and the latter were "second-hand" looms from the West Point mills. Said machinery was all appropriated by the incumbents and removed while the appeal was pending.*

344 Interrogatory 3 and 4. My answer to the direct examination—see interrogatory 3rd furnish a complete and exhaustive answer to these two interrogatories.

Interrogatory 5. To answer this, one must know as to what kind of cotton factory the estimate is wanted for, *i. e.*, whether for the manufacture of sheeting, duck or some other product. The cost of a plant for making duck is much greater, relatively, than for sheeting, owing to the greater quantity of preparatory machinery, carding, etc., needed. On a rough estimate, in the absence of further particulars, for a model duck mill plant I should fix the cost as about $28.00 per spindle, possibly less. This covers the complete equipment. This estimate would apply to the date of the sale—Sept. 6—92. I note the average cost of all the mills in and around Augusta, Ga., are based on say $28.12 per spindle and about $1,000 per loom and outfit.

Interrogatory 6. No, the receiver adding nothing. My answers to direct interrogatories 3rd and 6th, will show all the machinery and improvements or repairs applied by the Huguley Mfg. Company, and the cost of same.

Interrogatory 7. I became actively identified with the management of the Alabama & Georgia mills in 1880, but the administration proper of my firm. W. H. Huguley & Co. began July 1, 1882, and continued through 6 years, up to July 1st, 1888, inclusive.

During that period (July, 1882, to July, 1888) the factory was neither "a very poorly equipped concern," nor was it "badly managed," as the records of the proceedings before the State court plainly

prove. Neither is it true "that when it went into the hands of a receiver in 1888, it owed over and above the bonded debt, as you (I) claimed, almost $200,000." The question is as utterly absurd, as it is untrue. To ask me to parade before the court the single item of liability, of a corporation, like the one in question, without placing
in juxta-position the "resources" or "assets," as well even if
345 the amount named in the interrogatory were correct (which
I deny), is calculated to mislead. For, it is quite common for corporations to owe a great deal of money in comparison with their capital stock, the Atlanta national bank, for example, and at the same time be the most solvent and prosperous of institutions. So, in the case of this cotton factory. In Jan., 1888, we were carrying about 2,000 bales cotton valued at over $110,000, and the other "quick assets," consisting of manufactured goods, bills receivable, etc., etc., aggregated quite as large a sum. Naturally then, the mill's overdraft with our firm, the bankers of the corporation, was proportionately large.

I made still other reports of the condition of the property during 1888; one for the quarter ending March 31st, 1888, one for the quarter ending June 30th, 1888, and an amended report to the latter in August, 1888, after the rupture came and we were compelled in self defense against the machinations of certain designing persons, to foreclose our mortgage. Notwithstanding the unusually heavy stocks carried throughout 1887–8, (for "*it was a pretty hard year for manufacturing," and cotton was high—10 cts.*) at no time *did we claim a debt within $80,000, of the amount mentioned.* Fortunately, while our counsel introduced as an exhibit before the special master appointed by the State court, a type written duplicate of my report submitted for the quarter ending June 30th, 1888, (see Record pages 430 and 431, vol. II.) I preserved the original report, and I now attach same as part of my answer, marked "Exhibit B." This report shows that while I reported as due sundry persons $18,820, and to W. H. Huguley & Company, $100,294 total $119,-14, I show, on the other hand, as *offset* "quick assets," consisting of cash $7,347.94, cotton, $19,536.91 goods, $6,985, bills receivable $36,302.42 and sundries $8,600, *total $91,207.18.*

Neither can any fair conclusion be reached as to the true
346 financial condition of the mill at this time (1888), without
taking into account the very heavy investment account, *i. e.*, cost of plant which was $321,801.34, as against which only $156,000 of capital stock had ever been issued. In other words, a corporation with aggregate resources of $413,008.52, as against which only $156,000 of stock has been issued, can well afford to carry considerable liability, and still be a most solvent and prosperous concern, particularly if half of said liability is to run fourteen years (as in our case).

In so far as being "poorly equipped" the facts are that within the six years of my administration, I applied new machinery, betterments, etc., aggregating in costs about $120,000, and more than

"doubled" the capacity or output of the mill within that period. In other words, in 1880 there were only 96 looms and about 3,500 spindles and their complement of other machinery, representing an investment account of say $200,000. As against this, as shown, I had brought the property up to a basis of 208 looms and 7,000 spindles, together with complete outfit for the manufacture of duck, the whole representing an investment account of $325,000. Therefore, the mill was certainly not poorly "equipped."

No more can it be charged that during my administration the mill was "badly managed," because the real facts are that when my firm was called upon in 1888 to give an account of *our* "stewardship"—we were charged by complainants with "rents and profits," as having been earned, aggregating say $300,000, for the six years. In support of the charge, said complainants introduced among others, an exhibit prepared by L. Lanier and incorporated in their bill showing that for the fiscal year 1887–8, which said L. Lanier testified "*was a pretty hard year for manufacturing, and that cotton had cost as high as 10 cents, the net earnings of the mill had been $32,858.52.* I attach hereto said exhibit of L. Lanier, marked "Exhibit C," detached from said bill.

347 The testimony of W. L. Lanier (Rec. page 135 and 141, vol. 3) was likewise introduced, who proved that the net profits of the West Point mills (a smaller mill) had been large for the period 1880–1888, say $25,000, to $75,000, net per annum. He further proved that our mill had *netted* $30,000, in 1881–2, the year he sold out to us, *i. e.*, with only 100 looms. Other testimony of like character from A. T. Dallis (Rec. p. 115–116) and others were introduced by said complainants proving that we had earned large profits.

Now it is significant that throughout this whole procedure before the State courts, at no time and in no connection *did either I or our counsel ever deny that such large profits had been earned.* On the contrary we, *conceded the correctness of said charge*, but in doing so, merely claimed credit for the following by way of accounting for said earnings:—

1882–8—(6 *Years*).

1. New machinery and betterments	$120,000
2. Dividends paid	54,000
3. Int. p'd to W. H. Huguley & Co., *et al*	74,000
4. Losses by fire and floods	15,000
5. Losses on cotton transaction, bought as "hedges" by order of directors	10,000
6. Bad debt made by W. C. & L. Lanier former treasurers and "ch'g'd off" (B. B. & Co.)	10,000
Total profits, 6 years	$283,000
Shows net profits per annum	$47,166

The above result accomplished on an average of only 140 in looms and outfit, and on cotton, the average cost of which for the six years 9.74. That the above was proven to the entire satisfaction of the special master is shown by his heavy award in favor of my firm. (See Rec. pages 82 and 86, vol. 11.)

348 At the proper time, I am prepared with abundant proof to establish that on the basis mentioned, the actual net earnings of the mill for the period enquired about were as follows:—

Cotton, 9.74. 1882–8—6 *Years*. *Average*, 140 *Looms*.

1. 1882–3	$44,000
2. 1883–4	46,000
3. 1884–5	27,000
4. 1885–6	60,000
5. 1886–7	43,500
6. 1887–8	32,858
Total earnings	$253,359
Per annum (net)	$42,222

(In this connection see "Exhibit B," showing profits for quarter ending June 30, '88, $11,210.27.)

Interrogatory 8. In answer to interrogatory 8th, the records will show the facts. It was my understanding throughout that Col. Hammond had undertaken to represent all three of the defendants of record, myself included and not until his last testimony in this case was I apprised that he never considered himself retained to represent others than the Huguley Manufacturing Company. I regarded all three of the defendants so closely bound by community of interests that I could not conceive how it was possible for one defendant to be successfully represented without proper representation of all. Certainly, I frequently urged upon Col. Hammond additional counsel, especially Judge Chilton, who he knew he had been our regular counsel for years. I further offered to associate with him Judge Hopkins, Capt. Jackson, Messrs. Arnold, Mr. King or any one he might prefer. Invariably he discouraged the tender assuring me throughout and even up to the rendering of the decree of his entire ability to handle the case. Upon one occasion I sent Mr. Alex King to Col. Hammond and offered him a fee of

349 $1,000 to join Hammond in protecting our interests. After a long interview between them, Mr. King reported to me that Col. Hammond had fully explained the whole case and he (King) said that while perfectly willing to undertake the case, he thought it would be a useless expense on my part, and unnecessary, because he and Hammond were satisfied no default could be established, and that there was nothing in the case. Reassured by this, and relying

upon Col. Hammond, I treated the whole procedure as a case of "black mail," afterwards hardly concerning myself enough to attend all the arguments. (I make this full explanation in anticipation of other interrogatories in the same connection.)

Interrogatory 9. The Alabama & Georgia Manufacturing Company did have interest in said litigation as principal defendant. All its interest in *the plant only*, was sold at the receiver's sale at Hamilton, but this by no means exhausted all the assets of the company. At the time of the sale of this realty, the receiver of the State court still held in his possession a large amount of supplies and findings, and also cash and other "quick assets," valued at about $20,000, all of which were available to meet the interest on the first mortgage bonds in conformity with the express order of the State court of May 22, 1889, wherein it was specially enjoined on said receiver to pay promptly "out of any funds of the corporation he may have so long as he remains in office" the interest on said bonds. Suffice it, the receiver is still "in office" and was "in office" on January 1, 1891, and on that date *had ample cash funds with which to have promptly paid the interest had due demand been made upon him.*

Until he shall have been discharged he is still the legal representative of the State court and charged with certain duties thereunder, and the corporation not defunct. In addition to such interest as the receiver of the Alabama & Georgia Manufacturing Company
350 had not only *directly* as the most important stockholder, but as trustee of the first mortgage bondholders, I had the legal right to protest against said sale. The paramount interest above all was in my firm, W. H. Huguley & Co., who, owning nearly every dollar of the stock, having merely quit claimed their interest in return of 2,000 shares ($200,000) of the Huguley Manufacturing Company stock, had the best right, in equity, to protest against a fraudulent compromise or sacrifice of their interests at all times, and especially against said illegal sale of Sept. 6th, 1892.

Interrogatory 10. The interest which I and my firm had in the property did not grow out of my contract with the Huguley Manufacturing Company.

As called for, I attach herewith a copy of the contract between D. Jannopoulo and W. H. Huguley & Company, showing that we bought said property through the agency of Chilton, Orrick and Graham, trustees; that, in buying the property, I borrowed about $9,000 each from D. Jannopoulo and John F. Plummer & Co., of New York; that, subsequently, upon the conditions named, we sold to D. Jannopoulo $35,000 of second mortgage bonds, with part of the proceeds of which we paid our debt and dissolved the trust; that thereupon, in return for 2,000 shares ($200,000) of the capital stock of the Huguley Manufacturing Company, we quit-claimed our interest, as a firm to our said corporation; that while D. Jannopoulo was made nominally president and general manager, Judge Chilton and I as the auditing committee, under the constitution and by-laws prepared by us, really represent the entire stock of said corporation except a nom-

inal amount given or sold off to make up a directory. The contract is marked "Exhibit D."

Interrogatory 11.

Interrogatory 12. My answer to direct interrogatory 8th, will suffice for full particulars in connection with the notice.

In acting for my father, as president of the Alabama &
351 Georgia Manufacturing Company, I was acting under no special power of attorney to give the particular notice, but merely under the general authority or power of attorney, extending over a period of fifteen years, during which time I always acted for him in any and all matters relating to the corporation.

The right of actual ownership, in the manner explained—the fact that the interest of my two concerns, the Huguley Mfg. Co., and W. H. Huguley & Co., were so identical as to be virtually almost one and the same, must be my authority for representing the Huguley Mfg. Co., at the time of giving said notice. However the records or minutes of the Huguley Mfg. Co., covering those meetings in St. Louis in April May and June, 1892, fully show the facts as to my full authority as well as of Judge Chilton to act for the corporation in any and all things in the premises, the nominal president having been disqualified and "dropped out." (See copy of letters, &c. to Van Rensaler, Jannopoulo and Orrick under "Exhibit G.")

Interrogatory 13. Col. Hammond and Mr. Orrick were both present at the sale.

Supplementing all said in my answers to previous questions in the same connection, I will further explain and emphasize that pursuant to the appeal originally filed it was Col. Hammond's purpose and desire to prosecute said appeal. As a condition precedent to doing so, however, he exacted still another heavy fee, which for my part I was not able to raise and Jannopoulo refused to do so for reasons of his own. Hammond was notified and it was my desire as expressed to him that he should continue in the case with Judge Chilton, but conditional on his accepting a contingent fee. He had this option, and I have not pressed him for any final decision, therefore, was not aware that he contemplated withdrawing from the appeal until I went to him just a few moments before the sale and
352 showed the notice to him and asked him what he thought of it, stating that I had been advised by some of the best lawyers in Atlanta by all means to give said notice. He read it and simply answered "It can not do you any harm," and as I was turning away he called me back and it was then he informed me of his final decision, (as his fee had not been forthcoming), to "drop out of the case." He then remarked "In view of the fact that I am not to go on with the appeal, perhaps you had better tear off my name from the letter-head, as it might mislead the public into thinking that I am retained to continue in the case." Recognizing the good sense in this suggestion, I think I borrowed his knife and cut off the caption. I never asked him to read the notice for me, but had already prepared a brief note to Col. Buck requesting *him* to read the notice

for me. I had been told that the latter was the proper person to give the notice. Neither Hammond nor Orrick refused to read the notice because neither was asked by me to do so.

Interrogatory 14. Because I was aware that Col. Hammond's fee could not be met and that he would not probably continue, Judge Chilton being absent, I consulted with other counsel. I did not ask either Hammond or Orrick to read the notice, because of the reason stated, viz.: that I intended to get Buck to read it up to the last minute, when accidentally meeting up with Mr. Frank Arnold, he volunteered to read the notice. No significance whatever can be attached to the circumstances attending said notice. With Col. Hammond it was purely a question of my providing an additional $1,500 fee, which I could not do "merely this and nothing more." Had the fee been forthcoming he would have continued in the case.

Interrogatory 15. As to the "estimated life of cotton machinery" this depends upon many conditions, such as the speed operated, and the quality of work produced.

353 The popular estimate of the life of machinery in the South running on coarse goods, in the absence of proper repairs, is about 20 years. All first class mills, however, are accustomed to add 5 and 10 per cent. of the original cost of the machinery annually in the way of repairs, with which precaution where the machinery has been originally selected from the best makers, machinery will last a much longer time and do good work. Unless kept in proper repairs it will rapidly depreciate.

As explained in my answer to interrogatory 12th, in the New England States, 8 and 10 per cent. is usually charged off for "wear and tear" or "depreciation." In the South, 5 and 8 per cent. is allowed, or the equivalent spent in repairs and new machinery.

Interrogatory 16. When I left St. Louis in June, 1892, as testified, Judge Chilton having engaged to prosecute the appeal upon a contingent fee, he introduced a formal resolution reciting the facts with respect to the necessity of taking steps to protect the company in making the supersedeas bond, paying the court costs incident to said litigation, etc., and by unanimous vote of the board of directors, I was handed one of the $500 2nd mortgage bonds of the $15,000, in the treasury of the Huguley Mfg. Company for the purpose of defraying, in part said absolute court costs. I negotiated said $500 bond in New York, and have devoted the proceeds as stated. Since this amount has been exhausted, I have been using my own or my firm's resources. As all our attorneys have made contracts based on conditional or contingent fees, payable at the close of the litigation, the $500 provided by the Huguley Mfg. Company have defrayed most of the actual costs. I have not made any further demands upon our corporation or upon D. Jannopoulo since being handed the $500, for reasons of my own.

Interrogatory 17. It is not true that I and my firm alone are carrying on this litigation. Neither is it true that I have the privi-

lege of using others' names on condition that I am to assume all expenses.

354 I grant that it is quite well understood that D. Jannopoulo, *personally* and in his *individual* capacity solely has refused to contribute one dollar to this litigation. *Officially* however, he is a party to the litigation, as plainly signified by his signature as president of the Huguley Mfg. Co. already of record in these appeal proceedings.

The real parties appear in said record, and in conclusion, I now distinctly state that every dollar of interest of what kind—whether property, equity of redemption or other resource in and belonging to the Huguley Mfg. Company, the Ala. and Ga. Mfg. Company and W. T. Huguley, as well as of W. H. Huguley & Co. are liable for the expenses of this litigation.

(Signed) W. T. HUGULEY.

Answered, sworn to and subscribed before us this 30th day of May, 1894.

H. T. WOODYARD, [L. S.]
Commissioner.
E. B. REED, [L. S.]
Commissioner.

"EXHIBIT A" TO INTERROGATORY 3.

Inventory of Machinery of the Huguley Mfg. Company, January, 1890.

1. Picker department.
   2 Kitson openers.
   1 Kitson lapper.
   1 Lord's lapper.
   1 Taylor & Lang lapper.
   Shaftings, pulleys and hangers complete.

2. Batting department.
   2 Bridesburg batting cards.
   1 Howard & Bullough batting card.
   1 pair lap scales.

3. Carding department.
   36 Foss & Peevy cards—36 in. x 36 in., under flat.
   6 railway heads.
   19 Howard & Bullough cards—50 in. x 36 in.

355 8 John Elce & Co. cards—45 in. x 36 in.
   8 Bridesburg roller "
   2 " batting "

4. Slubbing.
   1 Howard & Bullough card.
   5 Asa Lee's slubbing frames, 60 splds., each 10 in. lift bobbin, 4½ in. x 10 in.

1 Howard & Bullough slubbing frames, 140 splds., each 12 in. lift.
1 Howard & Bullough " " 60 " each 10 in. lift.
1 Howard & Bullough " " 50 " each 6 in. x 10 in.
310 spindles

5. Drawing.
6 Bridesburg drawing frames 4 deliveries each.
2 " " " 4 " "
2 Howard & Bullough drawing frames, 5 deliveries each.
2 Jno. Elce & Co. drawing frames, 5 deliveries each.
6 Howard & Bullough drawing frames, 6 deliveries each.
Total 14..... 24
7 railway heads.
Shafting, pulleys and hangers complete.

6. Speeders.
1 Howard & Bullough speeder, 120 splds., 4 in. x 8 in. bobbin.
1 Howard & Bullough speeder, 120 splds., 3½ in. x 7 in. bobbin.
1 Howard & Bullough speeder, 144 splds., 3½ in. x 7 in. bobbin.
Total 3..... 384
Shafting, pulleys and hangers complete.

7. Spinning department.

356	13 Bridesburgh frames,	2¾	in. gauge,	3,488	spindles.
	9 Jenks "	3	" "	1,836	"
9 English "		2¾	" "	1,632	"
1 Payne & Mathewson spooler,				74	"
1 Bridesburg "				80	"
1 Howard & Bullough "				200	"
Total.....				7,310	"

4 Howard & Bullough warpers.
4 spooler creels.
1 Hardy flat grinding machine, 2 rollers and 3 slats.
1 " grinder, 4 rollers.
5 " " for grinding cylinder and doffers.
1 roving reel.
1 pair roving scalers.
Shaftings, pulleys and hangers complete.

8. Slasher department.
2 Howard & Bullough slashers.
26 slasher beams.
2 sizing kettles.
1 yard reel.
1 band machine.
1 pair roping scales.

9. Weaving department.
28 Bridesburg looms, 36 inches.
48 English " 36 "
48 Woods " 36 "
40 Bridesburg " 36 "
12 Lowell " 36 "
16 " " 36 "
8 Bridesburg " 40 "
1 King & Burleigh ½
2 " " ½
203
3 8-day clocks.
Shaftings, pulleys and hangers complete.

357 Cloth department.
2 cloth inspectors.
1 finishing machine.
1 brusher.
1 shearer.
1 folder.
1 new cloth press.
1 sheeting "
1 pair scales.
1 " trucks.
1 set of roller covering machines.
1 equipment of stencils, brands, etc.
Shaftings, pulleys, hangers, etc.

Machine shop, etc.
1 lathe, 16 inches, swing, 9 feet long.
1 emery wheel.
1 circular saw.
1 vise.
1 pipe clamp.
1 grindstone.
1 blacksmith shop set of tools, bellows, anvil, etc., etc.

Sundry.
1 elevator.
1 boiler, 60 horse power.
2 56 inch Leffel wheels (water).
1 74 " " " "
1 rotary pump and pipes, etc., (fire).
1 Deam steam fire pump.
1 water tank—1,000 gallons capacity.
Complete equipment of Hill's automatic sprinklers, with fire hose, fire buckets, etc. etc.

Driving.
1 driving shaft. 2 drivers.
8 gear crown wheels, crown pinion.

358 50 feet main shafting 6 inches diameter.
300 " " " 3 " "
5 large drivers.
85 medium drivers.
30 counter shafts.
300 " "
5 large hangers, main line.
175 medium hangers 18 inches drop.
1 main driving belt (new).
All other driving belts, etc., etc.

ST. LOUIS, MO., *May 26th*, 1892.

C. S. Van Rensselaer, attorney American Surety Company, New York.

MY DEAR SIR: Having been summoned here by Mr. Jannopoulo, my time since I have seen you has been taken up in auditing business of our corporation, which is not yet finished. As president of the Huguley Manufacturing Company, Mr. Jannopoulo, on my suggestion and prompted by the advice of myself and counsel Judge Chilton of Alabama who had been here with me for the past week, has directed Messrs. N. J. & T. A. Hammond (being counsel for the Huguley Manufacturing Company) to give notice of appeal the moment the decree is rendered by Judge Newman and with further instructions with Mr. Thad Hammond, your agent and attorney, to go about making necessary bonds. In response, Hammond still writes Col. Orrick local attorney for the corporation, expressing the same doubts as to whether the court will accept a bond made by your corporation, but state, that no decree as yet has been rendered. On Hammond's advice and the advice of Orrick and Chilton, I have directed Judge Chilton to act in behalf of my father, as president of the Alabama & Georgia Manufacturing Company and my behalf as trustee of first mortgage bonds and join with Hammond, attorney for the Huguley Manufacturing Company in making concurrent appeal.

359 Col. Orrick suggests that if the court refuses to accept such bond, as you have kindly undertaken to make that we have some individual to make said bond and you indemnify said individual or individuals.

Judge Chilton left last night for the South and will join me early next week with necessary abstract of titles, the only condition stipulated by the trust company. Judge Chilton by the appointment of his brother-in-law Col. Thorington to the supreme bench of Alabama has fallen heir to an immense business and possibly may not be able to go to Baltimore and New York in my interest, in which event I may want you to act for us. Kindly advise me here by return mail whether you could leave New York early next week. It would hardly consume more than a day of your time, as the trust company simply desires to know that the title is absolute in the Huguley

Manufacturing Company. Of this there is no question. This done and I command all money necessary to carry out my present plans. After Monday kindly address me care of Steel, Semmes & Cary National Bank, Baltimore building, Baltimore, Maryland.

As to compensation for your valuable services at this juncture I think I will not err in deferring to your spirit of fairness with which I have been impressed.

Yours respectfully, W. T. HUGULEY.

"EXHIBIT G" TO INTERROGATORY 14.

ATLANTA, GA., *July* 21, 1892.

W. T. Huguley, Esq., West Point, Ga.

DEAR SIR: The decree in the case of Robinson trustee *vs.* The Alabama & Georgia Mfg. Co., *et al.* was made on the 30th day of May, 1892. In order to stop the sale of the property, we must have the bond required by law filed and approved in the clerk's office within sixty days from that date, say on or before the 29th
360 day of this month. We may have to communicate with Judge Newman, who is at Keswick, Albemarle county, Virginia. Therefore there is no time to be lost.

The bond must be in the sum of $10,000, conditioned to pay the costs and damages which the plaintiff may sustain by reason of the appeal. The strong probabilities are that the security would never have anything to pay, because we suppose that in any event the mill will pay the first mortgage bonds, if we should fail to reverse the decision. You must get some man in Georgia to stand the security, who can swear that he is worth $10,000, over and above the legal exemptions in this State.

Unless you act promptly, you will lose the opportunity of stopping the sale.

Yours truly, N. J. & T. A. HAMMOND.

EXHIBIT G.

Know all men, by these presents, that we, —— —— as principal and —— —— as security are held and firmly bound to J. J. Robinson, trustee, *et al.* in the just and full sum of ten thousand dollars, to be paid the said J. J. Robinson, *et al.* his and their certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this — day of August one thousand eight hundred and ninety two subject to the following conditions, to wit:

Whereas, lately — trial in the circuit court of the United States for

the northern district of Georgia, March term 1891 in the case of J. J. Robinson, trustee *versus* The Alabama & Georgia Manufacturing Company, *et al*, being No. 360. in equity a decree was ren-
361 dered in said court by his honor Judge Newman, judge of the district court of the United States for the northern district of Georgia in favor of the plaintiff *vs* the defendant for the sum of — dollars and the said defendant desiring to enter an appeal from said decision to the circuit court of appeals of the United States to be holden at New Orleans on the third Monday in November, 1892. Now the condition of the above obligation is such that if the said —— —— as principal and the said —— —— as security shall prosecute said appeal to effect and all damages and costs in said case if they fail to make the said appeal good and reverse the said decree, then the above to be void; else to remain in full force and virtue.

—— ——.

Sealed and delivered in the presence of,

—— ——.

ATLANTA, *August* 26, 1892.

Mr. W. T. Huguley, West Point, Ga.

DEAR SIR: The American Surety Company of New York has fully complied with the laws of Georgia has paid all taxes and licenses, has authority to do business in this State.

Yours truly,

WM. A. WRIGHT,
Comp. Gen'l & Ins. Com'r.

ATLANTA, GA., *July 28th*, 1892.

John C. Orrick, Esq., St. Louis, Mo.

DEAR SIR: I beg to call your careful attention to my several letters written to both you and Mr. Jannopoulo from here this week, particularly to letters addressed by Col. Hammond and myself yesterday and to-day. My letter this p. m., to Mr. Jannopoulo is fully explanatory and I have requested him to lay it before you without fail. Judge Newman will be here a day or two longer and it is all important that the bond be fully made and approved before he leaves for Virginia. You will know how to go about it at your end.

362 I can not stress further the vast importance of speedy action in the premises. Too much is involved to all parties at interest for us now to hesitate for a moment. After all, the making of the bond is a mere evasion of a technical ruling which can not stand on a fair hearing. Even should the ultimate decision prove adverse to us, it can not be rendered before late in December and the property could not be offered for sale before February or March, '93, by which time, apart from all the time thus allotted to us for funding the bonds or other financial recourses open to us, possible

within a period of seven or eight months, with good luck I estimate that the mill itself can "work out its own salvation."

I appeal to you now to guide Mr. Jannopoulo and instruct us here without a moment's delay.

Yours respectfully, —— ——.

D. Jannopoulo, Esq., St. Louis, Mo.

DEAR SIR: I wrote from here last p. m., full report of the status of things at this end, and since your letter of 28th July has reached me from West Point.

I shall do my best of course within the next few days to make that appeal bond, but both Col. Hammond and I have already stressed the obstacles in my way here. Even the American Surety Company on whom I have relied, in so many words expressed their surprise why such a small bond could not be easily made by us; and yet when you consider the poverty of the people, the general aversions to making endorsements, partnership agreements, lawyers not permitted to make bonds for clients, and above all the general cloud which has been placed by the ruling of the court charging at your door the entire responsibility, you can well understand and appreciate how I am handicapped.

The surety company only yesterday wired their willingness to make bond if they themselves were indemnified by "absolute
363 collateral." Exactly what this means, I have written to find out, tendering mortgage on everything we have to secure them. By to-morrow I expect to have their reply, and will report to you promptly.

If unfavorable we must insist that you take immediate steps to make the bond. We are all agreed that if you are inclined to do so, the bond can be easily made, and it — hardly necessary for us to employ more positive terms than to say that you *must* make it.

The certificate check asked for will solve the problem. Wire advice that is en route.

Yours faithfully, —— ——.

ATLANTA, GA., *July 28th*, 1892

D. Jannopoulo, Esqr., pres't, St. Louis, Mo.

DEAR SIR: I am again disappointed in reporting that one of my friends on whom I had relied to make the bond for appeal, has not yet consented to do so. He is a prominent real estate man and banker and is inclined to oblige me but thinks that you might arrange in St. Louis to forward here a certified check for the $10,000.00 to be held by him or some other banker by way of indemnity for lending his name as bondsman. I had him and Col. Hammond to confer at length this a. m. and Col. Hammond gave him every assurance, from his standpoint as our lawyer, that there was not the smallest degree of risk attaching to making the bond. Nevertheless the result was as above stated. Col. Hammond and I after exerting

our best effort judiciously *i. e.* without "hawking about" our business have finally concluded that you had better not count on anything at this end but proceed to hedge against the matter in question in such manner as you and Col. Orrick may deem best. After all, it is only an evasion of a technicality of Georgia law, the statute not admitting a bond to be made as proposed by the American Surety Co. It must be done by a resident of this State. There-
364 fore, should you arrange through our bank in St. Louis or some other medium to have that bond made, for our part we may say to you that you have our full consent and authority not to only pay the American Trust Co. the trifling compensation which may be charged by the surety Co. for indemnifying the bondsman or the maker of the bond but you can apply all or any part of the treasury stock and bonds by way of further indemnity.

Col. Hammond is writing you by same mail. Both he and I wrote you fully last p. m. You will receive our letters early to-morrow morning, and we both are exceedingly anxious to have something tangible on which to predicate a conclusion of this vexatious matter before Judge Newman leaves the city, which he says may be to-morrow night. Col. Hammond had an extended interview with Judge Newman to-day and has laid before him all necessary documents looking to appeal merely adding that the bondsman would be named later.

Our matter is being watched with interest here and the bond having been reduced to such a comparatively small sum that it will be a great reflection and a thing inexplicable if this bond be not promptly made. Of course only you and our immediate attorneys know what immense issues are at stake so far as you and I are concerned—so great indeed that it is entirely out of the question for me to abandon the idea that even I, handicapped as I am, cannot myself manage the matter at this end. One thing certain, by either one or the other that bond *must be made*.

You will of course explain to the bank, that they will be indemnified if necessary, by the American Surety Co., and that if they issue the suggested certificate of deposit it will not be used but merely held subject to the final decree of the court in December. The interest, if any charged, can hardly exceed $200.00 as the case will come up for a hearing sometime in December.

An additional reason for making the appeal is the almost
365 certain fact that within the time our entire issue of bonds can be funded and the settlement between you and my firm can thus be brought in the line marked out. Two stock and bond brokers propose to make a trip immediately on this mission. Show this without fail to Col. Orrick.

"EXHIBIT G."

ATLANTA, GA., *August* 1*st*, 1892.

Messrs. D. Jannopoulo, president, and John C. Orrick, attorney, St. Louis, Mo.

GENTLEMEN: Referring to my respects of last night from West Point on my arrival here I find copy of letter from Col. Hammond herein enclosed, which crossed me enroute.

The American Surety Company people have drawn it a little too strongly when they touch upon the matter of collateral. The trouble is Mr. Van Rensaeller was the official with whom I made my contract and to whom I made necessary explanations, etc. He expressed himself entirely satisfied and not only gave me a written contract promising to make the bond for $350, but likewise gave me an affidavit certifying that the American Surety Company was worth $1,500,000, over and above all liabilities, same to be exhibited in court. He did casually inquire what class of collateral I could give, and I explained to him in a general way that the Huguley Manufacturing Company had the $700,000 and $15,000 Treasury *and* stock and bonds, all or any part of which might be utilized. On Saturday last I further wrote them offering to give them in addition a first lien or mortgage on everything W. H. Huguley & Company own, exhibiting statements.

The trouble is Mr. Van Rensaeller is in Europe and Mr. Benedict is the attorney, who took up where Mr. Van Rensaeller left off. I am satisfied that my proposition will meet with favor, and I expect to hear by to-morrow or the next day (at the outside).

366 My plans as laid last week were for the surety company to indemnify the individual and on this assurance my friends in Georgia had agreed and still agree to make the bond. Now pending answer as to whether the security company will accept the collateral tendered. I mean to put out my very best effort to get some local friend to make the bond regardless of the American Surety Company, the Treasury bonds and stock being virtually "gilt edge" with note of the corporation and same endorsed by my firm W. H. Huguley & Company. I will hear from New York to-morrow—possibly from you.

While sanguine as to the final outcome, I must again urge upon you to be in readiness for our last resort and provide Hammond at the very last moment or earlier, with that certified check, previously canvassed between us. This must be done without fail by August 6th, 1892.

It can hardly cost to get necessary bond for mill more than $150 and $200. This is the cheapest and most dignified thing to do. I will remain here until I hear from you by wire. Telegraph fully and promptly care Hammond.

Yours respectfully,

W. T. HUGULEY.

ATLANTA, GA., *Aug.* 1, 1892.

Copy

W. T. Huguley, Esq., West Point, Ga.

DEAR SIR: Enclosed find two letters, one from Jannoppoulo, and one from Wheelwright Eldridge & Co., of New York, both of which we opened and read as you requested. They give you no aid on the subject of the suretyship.

The same mail brought us a letter from the American Surety Co., in which they say that, while you were in their office in New York, they informed you that they "would consent to execute such a bond only, provided they were absolutely indemnified by the deposit of tangible, negotiable or marketable collateral security, but we utterly fail to obtain from Mr. Huguley as to what, if any, security
367 he could give us." * * * We are free to say, however, that from our interview with Mr. Huguley, we did not believe he is in position to offer us any collateral, which would be satisfactory. And further, in as much as the bond to be given appears now to be a bond of indemnity to personal sureties, we presume that if he were in position to give such satisfactory collateral, it would be easier for him to secure his bondsmen directly with the same collateral."

This seems to be quite a plain declination on the part of that company to deal further in the matter. Indeed, we have no time now to make a bond through them.

We will delay the mailing of this letter this morning, thinking that perhaps you may come to the city."

Yours, N. J. & T. A. HAMMOND.

(Copy)

Referred to Messrs. Jannopoulo and Orrick.

"EXHIBIT G."

ATLANTA, GA., *Aug.* 25, 1892.

American Surety Company, New York, N. Y.:

Appeal bond ten thousand declined, grounds non-residents. Have written contract with Mr. Van Rensaller to make bond. Answer. (Collect.)

W. T. HUGULEY.

Copy of Telegram.

114 90 189–

Dated New York, 29

To W. G. Huguley, Atlanta:

Mr Jannopoulo has left the city.

T. T. LAMAYLINS.

"Exhibit G."

Night Message.

The Western Union Telegraph Company.

7, 29, 1892.

Rec'd at 11 p. Atlanta.
Dated St. Louis, Mo., 29.

To W. T. Huguley or N. J. & T. A. Hammond:

Replying yours twenty-seventh, see letters of yesterday to you and Hammonds.

D. JANNOPOULO, *Pres't.*

368 Postal Telegraph Cable Company.

Received at main office, 11 E. Ala. St., Atlanta, Ga.

14 a Cg Bp 6 paid 9:45 a.

CHARLESTON, S. C., *Aug.* 23, '92.

W. T. Huguley:

We decline going on the bond.

MANDO PHOSPHATE CO.

The Western Union Telegraph Company.

11.56 a

ATLANTA, GA., *Aug.* 26, 189–.

Dated St. Louis, Mo., 26.

To W. T. Huguley, Esq., care of N. J. & T. A. Hammond, city:

Replying your letter twenty second I have written Hammonds fully.

D. JANNOPOULO.

The Western Union Telegraph Company.

144 N

ATLANTA, *Aug.* 8, 1892.

Dated St. Louis, Mo., 8.

To W. T. Huguley, care N. J. & T. A. Hammond, Atlanta:

Refer you to my letter of second inst.; that is all I can do.

D. JANNOPOULO, *Pres't.*

ATLANTA, GA., *July 27th*, 1892.

Mr. Samuel W. Goode, offic-

MY DEAR SIR: Referring to your interview of this a. m., I beg to submit to you herewith the following proposition:

1*st. As to making bond for* $10,000.

This has reference to a certain action brought before Judge Newman in the United States circuit court of the northern district of

Georgia, by J. J. Robinson, trustee *et al.* plaintiff- *vs.* The Ala-
369 bama & Georgia Mfg. Co., *et al.* defendants. The court rendered a decree on the 30th May, 1892, and fixed the amount of the appeal bond at not exceeding $10,000.

The nature of this suit and the causes leading up to the same have been already discussed between us and for further particulars and information we refer you to our attorneys Messrs. N. J. & T. A. Hammond, who will join me in the positive assurance that there can be no possible chance of incurring any loss whatever in making said bond for $10,000.

(I.) Because the American Surety Co. of New York has proposed to make said bond directly and in any amount. On announcement of this, the court ruled that a bond of not exceeding $10,000 should be given. Thereupon, the opposing counsel raised the point that the Georgia statute would not allow a bond made by a non-resident. To get around this statute, it has been decided to get some friend or friends to make the bond and concurrently with doing so, the American Surety Co. has engaged to indemnify such friend or friends against any and all expense or liability attaching thereto.

(II.) In addition to this guarantee or indemnity against any sort of loss, we, (W. H. Huguley & Co.) will cheerfully furnish ample other collateral to be held by you until this case shall have been finally settled.

(III.) That there can be not the remotest degree of risk is evidenced (1) that as late as January, 1890, this property, formerly known as the Alabama & Georgia Mfg. Co. was knocked down to us at receiver's sale at about $175,000 cash basis, and that too, when money was scarce and rates high. The original cost to date (realty and machinery) has been $347,000. (2.) The main building alone is insured at lowest standard rates in best companies for $200,000. The other real estate, consisting of picker house, warehouse, superintend-
370 ent's house, stores, operative houses, etc., are estimated to be worth about $75,000 more. (3.) Upon reorganization under the style of the Huguley Manufacturing Company, there was wiped out a disbursement account in shape of dividends, interest to W. H. H. & Co., bankers and others, improvements, etc., etc., aggregating $31,000 per annum. Thus it remains that only the $65,000 first mortgage bonds alone now "cut any figure." (4.) The earning capacity is large—having been about $25,000 for quarter ending March 31st, '92. (5.) In proof of all the above we append accompanying statement showing condition of mill, profit and loss, list of insurance now in force, etc., etc.

As explained to you in person, it is desired (1) through the agency of your good self to make the bond mentioned and as compensation for so doing we will engage to pay you — dollars.

(2.) It is furthermore desired at the earliest moment practicable to fund, if possible, the entire issue of first and second mortgage bonds now out, viz., $65,000 first mortgage bonds Alabama and Georgia

Manufacturing Co., and $35,000 first mortgage bonds, Huguley Manufacturing Co.

The former issue is 5-20s, the latter issue 1-14s, both maturing in 1904. The rate of interest now 8 per cent., payable semi-annually.

As to the rate of the new issue contemplated, I would explain that existing contract obligates a certain party to subscribe to $35,000 on a basis of 6 per cent. and we can control, if necessary, $20,000 or $25,000, thus leaving for you to place say about $50,000 more. In other words, we can start the subscription with say $50,000 on basis of six per cent. This being the case, if any concession be found necessary, it would perhaps be wiser to make it in the price at which you may offer your $50,000.

As further explained to you, our purpose is funding these bonds is not so much a saving of interest as of large commissions, etc., being now paid, which I estimate at $25,000 to $30,000 per annum.

371 For placing $50,000 or more of the proposed issue of bonds, we will engage to pay you — per cent. or say — dollars.

Kindly signify your acquiescence by signing with us in duplicate this paper, which I trust will cover the substance of our conversation.

Yours faithfully,

—— ——.

"EXHIBIT H" TO INTG. 12.

The Property of the Huguley Mfg. Co.

$40,000 On their four-story, metal-roof brick factory building, including pipes and piping therein; known as the "Huguley Manufacturing Co.'s cotton mills;" operated by water power, on the Chattahoochee river, about seven miles below West Point, Georgia.

$140,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$10,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$5,000 On their three-story stone metal roof picker house, including their pipes and piping therein located eighteen feet on the south of the main building.

$2,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps, and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures and all implements and utensils in their business,

or for ordinary repairs, contained therein, or which may be added.

$3,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$200,000.

$200,000 total insurance permitted.

372 Permission granted to run until nine o'clock at night, to set up and adjust machinery and to make all ordinary repairs.

To attach to and be made part of policy No. — of the —— Insurance Company of —— which covers *pro rata* on each of the above items to the amount of — dollars.

—— ——, *Agents.*

Printed form referred to in the within testimony.

E. R. AUSTIN, *Com'r.*

To D. Jannopoulo, president:

Below find record of policies as renewed and in existence July 22 1891, on Huguley Manufacturing Company, near West Point, Ga., with loss payable favor: First mortgage bondholders trustees, J. J. Robinson, W. C. Yancy and W. T. Huguley.

London and Lancashire	1842332	Feb.	5,	'92,	$12,500	
Liverpool London and G	2773	"	17,	"	25,000	
Scottish Union & Nat'l	1537977	"	17,	"	5,000	
Scottish Union & Nat'l	1537991	Mar.	19,	'92,	5,000	
Commercial Union Assur. Co	102465	"	27,	'92,	12,500	
London Assurance Corporation	1207618	June	25,	'92,	5,000	
					$65,000	$65,000

With loss payable favor St. Louis Trust Co., trustees for bondholders.

Commonwealth Union Assur. Co	102516	July	8,	'92,	$25,000	
Orient Insurance Company	1243	"	8,	"	15,900	
Rome Fire Insurance Co	25014	"	8,	"	7,500	
Merchants of Newark, N. J	698617	"	10,	"	2,500	
					$50,000	50,000

Without any loss payable clause.

Commonwealth of N. Y	11022	Aug.	25,	'92,	$5,000	
Union Assur. Asso. of London	919636	"	25,	"	5,000	
Scottish Union & National	1543216	M'ch	24,	"	10,000	
Scottish Union & National	1543238	May	26,	"	10,000	
Norwich Union	1956424	July	25,	"	10,000	
American of Philadelphia	3299	"	15,	"	15,000	
Merchants of Newark, N. J	728579	"	12,	"	5,000	
Phœnix of London	3242706	"	22,	"	10,000	
Royal Ins. Co., of Liverpool	4367619	"	15,	"	15,000	
					$85,000	85,000
						$200,000

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"EXHIBIT H."

Testimony of Torbett.

Bill to foreclose mortgage.

In the United States Circuit Court, for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MFG. CO. ET AL.

Bill to foreclose mortgage.

In the United States Circuit Court for the Northern District of Georgia.

We consent that the testimony of Mr. M. B. Torbett of Atlanta, Ga., may be taken without a commission by Mr. E. R. Austin as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy.

ABBOTT & SMITH,
Solicitor for Plaintiff
N. J. & T. A. HAMMOND,
For Defendant-.

Mr. TORBETT being examined answers as follows:

(By Mr. HAMMOND:)

Q. What is your business, and how long have you been engaged in it?

A. My business is insurance. I have been in it about five years.

Q. If you have ever insured the property once owned by the Alabama & Georgia Manufacturing Company, and now occupied by the Huguley Manufacturing Company, below West Point, Georgia, state in what companies you insured it, and in what amounts and how?

A. I insured the property as shown by the paper hereto attached. I insured the Alabama & Georgia Manufacturing Company, previous to its being called the Huguley Manufacturing Company, in the name of H. C. Fisher, receiver, and then after H. C. Fisher sold the property I became acquainted with Jannopoulo and Orrick and Graham through him. And after that I solicited the insurance, and they gave it to me.

Q. At that time what insurance had you on it?

A. 37,500, in two policies. Those were written through
374 the Atlanta home office, and the policies at that time were at the Lowry Banking Company.

Q. To whom was the insurance payable?

A. To Robinson, Yancey and Huguley.

Q. Is that insurance payable, to the different persons and to the different amounts there stated, in a mere arbitrary thing, or was it fixed by inspection?

A. When it was turned over to me, I went there, went over the mill, and made a thorough inspection.

Q. What proportion is there between the value of the property and the $200,000 of aggregate insurance represented on said list?

A. I thought it worth more than $200,000, or else I would not have taken the risk.

Q. What was and is the usual proportion between actual and insurable value?

A. On manufacturing property like this we always have actual value at least 15 per cent. or 20 per cent. larger than the insurable. I visit the mill at least twice a year for inspection.

Q. Do you know whether in that time the property has increased or decreased in value?

A. I do not think it has decreased, *for they seem to be making improvements.*

"EXHIBIT B."

Balance Sheet Showing Condition of Ala. & Ga. Mills, Quarter Ending June 30–88.

Stock issued to date		$156,000.00
5—20 bonds, due in 1904		65,000.00
J. J. Robinson	$1,000	
J. G. Andrews	3,500	
Mrs. Doss	500	
C. C. Jones	3,263.70	
		8,263.70
For cotton:		
Bank of Lafayette, Ala	$5,970.30	
R. W. Allen	1,834.40	
375 Cotton rec'd to be priced and unsettled	551.61	
		8,356.31
Atlanta nat. bank		15,000.00
George W. Wicks & Co	5,000	
Less	3,206	
		1,794.00
W. H. H. & Co., notes & int	80,500	
Add note	3,000	
		83,500.00

Bridesburg Mfg. Co		2,200.00
Net surplus on hand		72,894.46
		$413,008.52

Profit and loss.

Net surplus quarter ending March 31, '88	$61,684.24
By net profits for the quarter	11,210.27
	$72,894.51

"EXHIBIT B."

Balance Sheet Showing Condition of Ala. & Ga. Mills, Quarter Ending June 30, '88.

Resources.

Fixed investment to date	$320,084.74	
Added this quarter	916.60	
		$321,801.34
357—176,759 at 9¾	$17,236.91	
31	1,300.00	
Cotton as per sheet	1,000.00	
		19,536.91
Goods in warehouse as per stock book		6,985.00
Goods and stock at mill as per supt.'s report		12,434.91
Bills receivable as per sheet		36,302.42

Sundries.

Unexpired ins. and taxes	3,000.00	
Rent	200.00	
Office figures, stationery, etc	400.00	
376 Bagging, etc	600.00	
Cl. and G. C. Ry	200.00	
Cl. and G. W. Ry	100.00	
Perkins	100.00	
In suspense Lehman Bros	4,000.00	
		8,600.00
		$405,660.58
Balance in treasury		7,347.94
		$413,008.52

Profit and loss, June 30, '88, $72,804.46.

Net surplus, quarter ending June 30, '88	$72,894.51

"EXHIBIT C."

The following is an exhibit of the production of the Ala. & Ga. Mfg. Co. for the year ending June 30, 1888, as shown by the superintendent's and treasurer's books. Prices extended being on an average of prices realized for what goods were sold.

7 oz. duck 643,369 @ 7½	$48,252 67	P'd for cotton at 10c	$176,454 69
8 " " 1,361,632 @ 8¼	112,334 64	Supplies	8,984 11
10 " " 876,964 @ 9⅜	85,509 73	Inc. and taxes	1,365 27
Sheetings, 10,540 @ 5½	579 70	" and salaries	4,087 67
Bats, 839,464 @ 6½	5,456 24	Pay rolls	31,963 40
Waste sold & on hand	4,000 00	Freights	2,266 36
Bagging	1,499 94	Repairs	620 45
Sundries	1,602 30	Insurance	1,760 98
Remnants	2,881 93	Hauling	1,755 70
		Profits	32,858 52
	$262,117 15		$262,117 15

Profits for twelve months ending June 30, 1888, $32,858.52.

"EXHIBIT D."

Agreement between W. H. Huguley & Company, of West Point, Georgia, and D. Jannopoulo, of St. Louis, Missouri.

Whereas, W. H. Huguley & Co., a firm composed of W. H. Huguley, W. T. Huguley and J. H. Nolan, and others, were lately the owners of the property of the Alabama & Georgia Manufacturing Co., located near West Point, in the State of Georgia, and

377 Whereas, the said property was sold at public sale by H. C. Fisher, receiver, on the seventh day of January, 1890, at the town of Hamilton, Georgia, to satisfy certain liabilities of the said Alabama & Georgia Manufacturing Company and

Whereas, at the sale the property was purchased by John C. Orrick, Malcolm Graham and J. M. Chilton, as trustees, to be held and disposed of by them, upon the terms and conditions fully set forth in a certain agreement dated the ninth day of January, 1890, which agreement is duly executed by said Orrick, Graham and Chilton, and the said W. H. Huguley & Co., by which agreement upon the payment of certain sums of money, at the time and manner stated in said agreement, by said Huguley & Company, the said trustees are to convey the said property to said W. H. Huguley & Company, or to such corporation as they may require, as in said agreement provided, and

Whereas, the said W. H. Huguley & Co. desire the aid of D. Jannopoulo, of the city of St. Louis, State of Missouri in an effort to reestablish the said property of the company lately known as the Alabama & Georgia Manufacturing Company, and make it a going concern, and

Whereas, the said W. H. Huguley & Company have caused to be organized a corporation known as the Huguley Manufacturing Company of Georgia, having a capital stock of two hundred thousand dollars ($200,000), with the view of having the said trustees to convey the same to said corporation, and desire that such arrangement may be made as that the said trustees will convey the said property to said corporation, above named, and

Whereas, to accomplish the purchase of said mill property, etc., and for other purposes, certain contracts were signed in duplicate between W. H. Huguley & Company of West Point, Georgia, and John F. Plummer Company of New York, under date of De-
378 cember 16th, 1889, and in triplicate between W. H. Huguley & Company and John F. Plummer & Company and D. Jannopoulo, and associates, under date of December 18th, 1889 the terms and conditions of which are duly and fully set forth and defined, and

Whereas, in conformity with said contracts, certain advances were made to W. H. Huguley by said John F. Plummer & Company, say, cash $9,000, and endorsement in shape of a note for $8,000, drawn by W. T. Huguley in favor of John F. Plummer & Company, and by them endorsed to the Atlanta national bank, and

Whereas, certain cash advances were made by D. Jannopoulo to W. H. Huguley & Company of nine thousand two hundred ($9,200) dollars — and

Whereas, the advances so made under the trustee's agreement were made subject to said contracts signed between the parties in interest under date of December 16th and 18th, 1889, respectively, and

Whereas, the firm of John F. Plummer & Company did, on the — day of ——, 1890, make an assignment and are not able to carry out their said contract, thus necessitating a new arrangement on the part of W. H. Huguley & Company, and

Whereas, the said contracts as to said Jannopoulo are hereby by mutual consent, cancelled and annulled, and

Whereas, said Jannopoulo is desirous of acquiring the general sales agency for said mills throughout the United States, and also to become the president and general manager of the mill property, and

Whereas, it is to the interest of all parties concerned to make the mill, without unnecessary delay, a going concern, and

Whereas, to this end, the aid and co-operation of said Jannopoulo has been invoked by said W. H. Huguley & Company.

Now, therefore, it is hereby agreed by and between W. H.
379 Huguley, W. T. Huguley and J. H. Nolan, partners as W. H. Huguley & Company of the one part and D. Jannopoulo, of the other part, as follows, to-wit:

The said Jannopoulo, in consideration of the covenants, terms and conditions here in after set forth, will endeavor to re-establish the business of said property lately of the Alabama & Georgia Manufacturing Company, upon the following terms and conditions, and not otherwise.

First. Said W. H. Huguley & Company are to make, without delay, a transfer, in due form, of all their rights, title and interest in and to the said property, lately known as the Alabama & Georgia Manufacturing Company, to the Huguley Manufacturing Company, a corporation of the State of Georgia, in consideration of $200,000 of paid up stock of said corporation.

Second. Fifty-one per cent. of the authorized capital stock of said Huguley Manufacturing Company of Georgia shall immediately upon the transfer aforesaid, be duly transferred by said Huguley & Company to John C. Orrick, as trustee, to be held by him as such trustee for the period of five (5) years from the date hereof unless at the expiration of three (3) years from the date hereof the parties who transferred said fifty-one per cent. of stock to said Orrick, trustee, or their assigns, shall in writing, request the said Jannopoulo to resign as such president and manager, and in case of such request the said Jannopoulo thereupon hereby agrees to so resign provided and as soon thereafter as he may be relieved, by said parties or assigns, by sale, at cost, of any bonds or securities of said company, then held by him, and is also duly relieved from any and all obligations he may be under as endorser, guarantor or surety upon any paper or other obligation of said company, and it is understood the said Jannopoulo shall not be required to resign as aforesaid after the period aforesaid so long as he may hold any securities, notes or obligations of said company, or is bound
380 in any manner therefor. Said Jannopoulo shall have the right after the first year to resign as president and manager of said company, as he may elect.

Third. The said fifty-one per cent. of said stock shall be voted at any and all meetings of the stockholders of said company, in manner and for persons as the said Jannopoulo may in writing, request, pending the said trust. It being understood, however, that the said firm of Huguley & Company, or their assigns, have the right to a representation of two out of five directors or in same proportion in said board, for whom the said trustee, at any meeting of the stockholders, for the election of directors, shall vote.

Fourth. It is further agreed that said Jannopoulo is to be vested with the control and management of the property so long as, by the terms of this agreement, he is entitled to the same.

Fifth. The present officers and directors of said Huguley Manufacturing Company of Georgia are to resign at once and the following persons are to be elected in their places: D. Jannopoulo, C. W. Martin, Martin S. Tirmenstein, W. T. Huguley and J. M. Chilton.

Sixth. D. Jannopoulo, or such other person or corporation as the said Jannopoulo may designate, *shall be the agent for the disposal and sale, of the whole output of the mills* lately known as the said Alabama & Georgia Manufacturing Company and such agent shall receive for his services a commission of five (5) per cent. of all such sales, to be deducted from the amount of the proceeds of such sales, when made. Payment on all sales guaranteed. And such agency shall

continue on such terms so long as said Jannopoulo remains as president and manager of the said Huguley Manufacturing Company, under the terms of this agreement.

Seventh. *Full and detailed statements of the condition and earnings, expenses, etc., of the business of the mills, are to be made up and*
381 *reported quarterly to the board of directors, or to a committee appointed to receive the same. Said board or committee to meet every three months, on the following dates, or as soon thereafter as practicable at the office of the company in St. Louis, Missouri, as follows: On the first Tuesdays of July, October, January and April, of each year at 10 o'clock a. m.*

An annual meeting of the stockholders will be held at the office of the mill in the State of Georgia, on the third (3rd) Tuesday of January, in each year, at 10 o'clock a. m. At such meeting a complete report of the condition of the mill, for the year last past is to be made. Sixty per cent. (60) of all dividends earned on stock held by said Orrick, trustee, to be paid directly to W. H. Huguley & Co., or their assigns. It is understood that sixty per cent. and not more, of the dividends earned by said company shall be declared semi-annually until a working capital of $20,000 is accumulated.

Eighth. In consideration of the said conditions, terms and stipulations said Jannopoulo hereby agrees and contracts as follows: That he will act as president and general manager of said Huguley Mfg. — of Georgia, for a reasonable compensation, it being understood that the salary of the president and general manager and treasurer, shall in the aggregate, not exceed $1,500 per annum. That he will endeavor to cause to be conveyed the said property now held by said Orrick, Chilton and Graham, trustees to the said Huguley Mfg. Co., of Georgia; to resume operations and bring about this result as soon as practicable, and further agrees that on the execution and delivery of this to make immediate steps looking to the accomplishment of the result herein above stated.

To subscribe for $35,000 of the $50,000 of second eight per cent. mortgage bonds, known as 1–14, (*i. e.*, redeemable at the pleasure of the company any time after one year with the privilege of
382 running fourteen years,) and, in event all the bonds are funded into six per cent. bonds, then said Jannopoulo will accept the six per cents. in lieu of the eight per cents. The price agreed upon to be par. It being intended to issue $50,000 of said second mortgage bonds. Said second mortgage bonds to be in fact first mortgage bonds of said Huguley Manufacturing Co.

It is further agreed that the said Jannopoulo may, at any time, after the trial balance of the first year's business is struck purchase ten per cent. of the capital stock of the said Huguley Manufacturing Company at par, upon the payment to the said trustee of the said amounts. Said trustee may transfer the same to said Jannopoulo and remit the proceeds of said stock to the parties who may have transferred the same to said trustees, or their assigns, as their interest may appear.

Ninth. It is further agreed that the said Orrick, trustee, shall also hold the said fifty-one per cent. of stock, as collateral, to indemnify said Jannopoulo, or his assigns, against all losses, damages or liabilities, growing out of the contract hereinbefore mentioned with J. F. Plummer & Co., for such period as such claim on the part of J. F. Plummer & Co., or their assigns, may remain open and unsettled.

Tenth. In case of death of said Jannopoulo pending the period of his presidency of said Huguley Manufacturing Co., said Orrick, trustee, shall appoint a president, who shall act until the estate of said Jannopoulo shall be relieved of all liability, on account of said company, and shall have disposed of securities as hereinbefore provided, in case of request on him to resign as such president, and such president shall have same rights as, under this contract said Jannopoulo would have had, had he lived.

Eleventh. Said Huguley & Company agree, on request of said Jannopoulo, president, *without cost to said Huguley Mfg. Co., to handle*
and warehouse all cotton purchased by said company, to forward
383 *all products of said company, without charge to said company,*
and W. T. Huguley agrees to give his individual services, without charge, if requested, by Jannopoulo, president, in starting said mill, and generally co-operate in organizing the mill, and running the same.

In witness whereof, the said parties have hereunto set their hands and seals — day of June, 1890.

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

In the Circuit Court of the United States for the Northern District of Georgia.

T. W. Williams and W. R. Kirby, N. P., West Point, Ga.:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court between J. J. Robinson, trustee *et al.* and Huguley Manufacturing Company that

And whereas, A. S. Elliott and G. A. Huguley, of Chambers county, Alabama are material witnesses in said suit on behalf of the defendants and can not attend said circuit court in person without manifest inconvenience.

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said A. J. Elliott and G. A. Huguley personally to come before you, and after being duly sworn to examine them concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands

and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 6th day of June, 1894.

[SEAL.]

O. C. FULLER, *Clerk.*

384 *Depositions of Huguley and Elliott.*

In the Circuit Court of the U. S., Northern District of Georgia.

J. J. ROBINSON, Trustee, etc.,
vs.
HUGULEY MFG. COMPANY ET AL.

Petition of defendants to vacate sale and for accounting of purchasers.

Interrogatories for A. S. Elliott and G. A. Huguley, residents of Chambers county, Alabama, whom the petitioners propose to examine at West Point, Georgia.

1. Do you know the parties in the above stated case? Where do you reside? Where are you now while answering these questions?

2. Were either of you bondholders, or not, of the Alabama & Georgia Manufacturing Company? Before the sale of the mill belonging to said company said sale being made at Atlanta, Georgia, September, 6th, 1892, were either of you present or not at any meetings of the bondholders of said company?

3. Where were such meetings held, and at what time? What part did L. Lanier and A. T. Dallas, if any, take in said meetings? What policy, if any, did the said L. Lanier urge, and what the said A. T. Dallas? What was the object of these meetings? What did L. Lanier declare to be his object, and what did he say in support of the same? What did A. T. Dallas declare to be his object, and what did he say in support of the same?

4. What, if anything, did L. Lanier say as to insurance upon the property, and how did this influence the bondholders? Where did he say this, and how often?

5. Was there or not a meeting of said bondholders held in L. Lanier's room at the Kimball house, shortly before the sale mentioned? What did L. Lanier say, if he said anything was the object of this meeting? If he said any money was to be raised, how
385 much was it, and from whom, and how should it be so raised?

JOHN M. CHILTON,
JOHN C. REED,
Solicitors for Petitioners.

Cross Interrogatories.

1. When was the meeting held? Who was present? State the names of all the persons present. Who was the chairman of the meeting and who was the secretary?
2. How came you to know anything about any meeting? Who informed you?
3. Were you a bondholder, and if so, how many of the bonds of the Alabama & Georgia Manufacturing Co. did you have? What became of your bonds? Who acted for you in getting the money on them after the sale of the property?
4. Where are the bonds you held now? When did you last see them.
5. How came you to testify in this case? Did you tell counsel for the movants in the case what you would testify in the case? When did you do so? To whom did you talk before testifying in the case.
6. State all you know that goes to show that the bondholders held a meeting for the purpose of devising a plan to keep the property from being sacrificed, and that the bondholders held a meeting to decide on a line of action and conduct for the protection of themselves. Have you done so?
7. Don't you know that all that was done or said at the meeting inquired about was done to protect the bondholders against loss, if possible?

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, ETC.,
versus
HUGULEY MFG. CO. ET AL.

STATE OF GEORGIA,
County of Troup.

386 By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia to us directed, we have caused A. S. ELLIOTT and G. A. HUGULEY, the witnesses in said commission named to come before us and being sworn true answers to make to the interrogatories to said commission annexed, deposes and answers as follows:

To the first interrogatory he answers:

Interrogatory 1. I know the parties. I reside in Chambers county, Ala., two miles from West Point, Ga. While answering these questions I am before the commissioner W. L. Williams and W. J. Kirby, in West Point, Georgia.

Interrogatory 2. I was one of the bondholders of the Alabama & Georgia Mfg. Co., owing twenty-five hundred dollars ($2,500) of said bond-. I also represented the bonds owned by Mrs. F. H. Huguley. Before the sale of the mill belonging to said company (Sept. 6th, 1892), I was present at certain meetings of the bondholders of said company.

Interrogatory 3. About two weeks prior to said sale there *was* a formal meeting or *conference* of the bondholders which was held in the Young Men's Library rooms, in Lanier's bank building. Said meeting had been called by L. Lanier, who with A. T. Dallas, were *most conspicuous* and acted as *chief spokesman* during the deliberations which took place, J. T. Kirby of Newnan, Georgia, acted as secretary.

There were two classes or wings of the bondholders, one of which consisted of those bondholders who were the real parties complainant in the action filed by L. Lanier and others looking to the foreclosure of their bonds. These complainants were Mrs. Lizzie F. Yancy, Miss Susie Huguley, A. T. Dallis, estate of M. T. Walker, and L. D. Hutchison representing in all about $38,000.00 of the first mortgage bonds. These were the parties who had declined to receive their interest and had allowed their names used in the filing of said suit.

387 The other class of bondholders, who had collected their interest on due presentment of their coupons at the proper time and at the proper place and to the proper person, and who accordingly never had any grievance and therefore were never parties to said suit consisted of myself, Mrs. F. H. Huguley, Mrs. Sallie Huguley, the Atlanta national bank, J. F. Hooper, the estate of Elliott and D. Jannopoulo, representing about $27,000.00 of said first mortgage bonds.

In explaining the object of said caucus or conference, L. Lanier stated that the object of said meeting was to induce all the bondholders to join together and "pool" their bonds for their mutual benefit and protection. To this end, he recommended that all the bonds should be surrendered or consigned to a committee, consisting of L. Lanier, A. T. Dallas and J. T. Kirby, which said committee were to bid all the bonds at said sale for the joint account, benefit and protection of said bondholders, whether complainants or non complainants. He stated that in this manner all parties concerned would either be able to buy the mill or in the event their bid did not prevail we would be all assured of getting *par* at least for our bonds.

It was distinctly stated and understood that this committee was to receive our bonds in trust, and as such trustees, they were to act for all the bondholders to the best interest of each and all.

Among other arguments used to carry his point, L. Lanier stated that in the event the bondholders' bid prevailed at said sale, said committee would be charged with the duty to issue bonds or stock on the *pro-rata* basis, each person's interest in and to said property

being represented in proportion to the amount of bonds held or contributed by each at the time of making said bid.

Another argument used by L. Lanier to induce myself and the other parties who had received their interest to "pool" our bonds in the purchase along with the real parties complainant, was the
388 statement that even if we did not so pool, we were liable for our share of the costs—just the same as those who had prosecuted the suit.

A. T. Dallas corroborated all these statements made by L. Lanier. Still another promise was made by L. Lanier to induce us to adopt his plans. He assured us that in the event the bondholders' bid should prevail, the new company which the bondholders as purchasers, should organize, would see to it that large improvements, repairs, machinery, etc., would be immediately applied thus enhancing the value of the property as a security to the bondholders.

Interrogatory 4. The argument advanced by L. Lanier as a reason why decisive action on the part of bondholders was necessary, and the one which seemed to carry with it the greatest weight with all the bondholders,—was the *positive* and *unqualified* statement made in that caucus by L. Lanier that *the mill was not insured and in the event of fire that the bondholders would suffer total loss.*

Interrogatory 5. Yes there was *another* meeting or conference of the bondholders which was held in Lanier's or Dallas's room in the Kimball house on the morning just preceding the sale of September 6th, 1892.

The object of said caucus as explained by L. Lanier, was to give Mrs. Sallie Huguley a final opportunity to join said pool, but particularly for the purpose of requiring all the bondholders to give their consent to the committee (Lanier, Dallas & Kirby,) to hypothecate or pledge their bonds with Jno. F. Hooper, this being the condition exacted by Hooper before he would advance the $10,000 required by the court as the initial payment on said purchase. This arrangement had been made with said Hooper by the committee in advance of our arrival in Atlanta, the committee having agreed to pay one per cent. per month interest on said money.

There was *still another* meeting or conference of the bondholders held in the Young Men's library in West Point, Georgia,
389 whereat we went through a farcical process of juggling whereby L. Lanier first issued to the subscribers to the pool a batch of Galeton Cotton Mills stock or papers representing stock.

Then required us to surrender the latter and in its stead he gave us a receipt calling for as many bonds as we had stock.

Subsequently two or three weeks thereafter these said receipts were called in by him, and again he substituted therefor the bonds (so called) of the "Galeton Cotton Mills Company of Chambers county, Alabama"—which alleged bonds are without any power of sale, and contain on their face no guarantee on the part of the trustee that the property was to be kept duly insured to the amount of the

bonds, both of which provisions are expressly stipulated on the face of the original bonds surrendered by me to the committee.

(I was taxed with costs amounting to about four or five per cent. of my holdings, the justice of which I fail to see, since I have never been a party complainant in said suit, but on the contrary, I with the others mentioned have repudiated said action as a fraud)

There had been a *paper agreement* drawn up by Lanier's attorney, Freeman, which was signed by all present except Mrs. Sallie Huguley—the subscribers thereto having been induced to join with the real complainants by the representations made by said L. Lanier in said meeting or caucus.

No copy was given me of the paper I signed and I did not recall the exact terms of the same.

Answers to Cross Interrogatories.

Interrogatory 1. One of the meetings was held Friday, August 26th, 1892. The other meetings were held as stated in my answer to direct interrogatory number 3.

There were present A. T. Dallas, J. T. Kirby, L. J. Blackman, A. D. Moore and L. D. Hutchinson and L. Lanier,
390 representing the hostile or adverse wing of the bondholders representing about $38,000.00.

There were also present A. S. Elliott, Walter Elliott, Miss Lula Elliott, Mrs. Sallie Huguley and myself. We having collected our interest and had never been parties to the suit, and therefore representing the friendly interest of said bondholders, say about $25,000.00.

I do not recall exactly who attended the other meetings already mentioned in the direct examination.

The meetings were informal, J. T. Kirby acting as secretary.

Interrogatory 2. I think it was A. T. Dallis who first informed me that he and Mr. Lanier proposed to call such meetings and that he urged me to be present.

Interrogatory 3. I was a bondholder owning $2,500.00 of bonds of the Alabama and Georgia Manufacturing Company, and representing about the same amount for Mrs. F. H. Huguley.

As explained in my answer to direct interrogatory 5 the original bonds I owned and represented were surrendered by me to Dallas, Lanier and Kirby, the committee created by the bondholders charged with the duty to bid in said factory for our joint interest and benefit.

This committee though charged with the duty to take care of the interest entrusted to them, immediately after the sale ceased to act as a whole, L. Lanier having been the sole person who cut any figure in the distribution of the bonds.

I do not know who acted for me, but presumed the committee or Mr. Lanier.

Interrogatory 4. After surrendering my said original bonds to said committee I have never seen them since.

Interrogatory 5. I have never had any conversation with either

of the counsel for movants. I came to testify in the case for several reasons.

In the first place because I feel that great injustice has
391 been done not only to W. H. Huguley & Co., and the Huguley Mfg. Company, but also to myself and every other bondholder, whether complainant or non-complainant, who has allowed himself influenced by L. Lanier. In the second place because certain representations made to myself and others of the bondholders by L. Lanier for the purpose of inducing us to allow our bonds pooled in said purchase were not true.

In the third place because I now know that I was so deceived to my absolute loss, not only in having been coerced into an arrangement which lost me a desirable investment, but subjecting me to a taxation of costs, etc., etc., without having received in return anything like my *pro rata* interest to which I was entitled. The alleged Galeton bond itself having turned out to be nothing like as good a security as the original gilt edge bond, which I was deceived into surrendering.

I talked with Mr. A. S. Elliott and Mr. W. T. Huguley and it was at the latter's suggestion that these depositions were taken for his interest as well as my own.

Interrogatory 6. I have already fully testified in answers to direct interrogatories as to what transpired at said meetings.

I admit that the object of my participation in said meetings was prompted mainly in said defense, because I was led to believe that the representations made by L. Lanier as to insurance and other material statements were true, and so believing I was alarmed as to my security. I was especially influenced by his argument that if we did not pool with the complaining bondholders we might not get 50c. on — dollar for our bonds. Being young and without legal advice and unduly alarmed as I have since ascertained I yielded to their importunities.

As to the property being "sacrificed" I cannot say positively
how it affected others, but the suggestion was advanced that
392 if we did not so pool the property might be sold and we be "mashed out" and many of us believed it.

Interrogatory 7. As explained in preceding answer I repeat that I believed "all that was done or said at the meeting inquired about." But, in the light of after events I now realize that I was deceived as explained and that L. Lanier was actuated in all that was said and done not so much to protect bondholders, but to get possession of his rival's property, without himself contributing one dollar to said purchase.

G. A. HUGULEY.

Answered, sworn to and subscribed before us this the 11th day of June, 1894.

W. J. KIRBY, [L. S.]
Commissioner.
W. L. WILLIAMS, [L. S.]
Commissioner.

Interrogatory 1. Yes, I know the parties.

I reside at the factory in controversy at River View, Chambers county, Ala.

I am before the commissioners in West Point, Georgia, as I answer these questions.

Interrogatory 2. Individually I was not the owner of any of the bonds of the Ala. & Ga. Mfg. Co. but I represented as agent seven thousand dollars ($7,000.00) of said bonds owned by my mother, sister and brother.

I was present at *two caucuses or conferences* of bondholders prior to said sale.

holders prior to said sale.

Interrogatory 3. The *first* meeting of the bondholders, which I attended was held in the rooms of the Young Men's library in Lanier's bank building in West Point, Ga. *The meeting was called by L. Lanier* about two weeks prior to the date fixed for said sale. *L. Lanier presided* over the deliberations. He and A. T. Dallis took a most prominent part throughout the whole of these and subsequent proceedings.

393 Mr. L. Lanier explained that he had a plan to urge which would protect the interests of all parties concerned.

There were two factions or parties of the bondholders, one consisting of Mrs. Lizzie Huguley Yancy, Miss Susie Huguley, the estate of Mr. M. T. Walker, A. T. Dallas and L. D. Hutchinson representing about $38,000.00 of the first mortgage bonds. These were the parties who had allowed the use of their names in the suit filed by L. Lanier and were the real complainants in said suit.

The other faction or party consisted of my family, Mrs. Sallie Huguley, Mrs. F. H. Huguley, G. A. Huguley, the Atlanta national bank, J. F. Hooper, D. Jannopoulo representing $25,000 of said bonds. The latter class had collected their interest on presentment at proper time and place, and therefore had never been parties to said litigation, but on the contrary had bitterly repudiated the whole attempt at foreclosure. Mr. Lanier explained that to carry out his policy, it would be necessary for both these factions to unite and pool their bonds and urged that the bonds should be intrusted to a committee consisting of L. Lanier, A. T. Dallas and J. T. Kirby, who should act as agents or trustees for all the bondholders and bid the full amount of all the bonds so pooled, for the joint account, interest and protection of said bondholders.

Acting upon *Mr. Lanier's* suggestion, *R. A. Freeman, Lanier's attorney, drew up a certain agreement* which was signed by all present except Mrs. Sallie Huguley. I did not keep a copy but was prevailed upon to sign it upon the representation then made by L. Lanier.

In support of his plan L. Lanier stated that by thus pooling the committee could either bid the full amount of all the bonds and thus guarantee the holders at least par, or in the event our bid should prevail we should own the property on a *pro rata* basis in pro-

394 portion to the amount of bonds each contributed to the purchase.

He further promised that if the property was knocked down to the bondholders the new Co. which the new company would organize were to institute at once repairs and improvements, thus increasing the security of the bondholders.

A. T. Dallas ratified all these representations of L. Lanier.

Interrogatory 4. The principal reason assigned by L. Lanier for prompt action on the part of the bondholders was that *the property had not been properly insured and in the event of fire the bondholders would suffer serious loss.*

This statement he made in said caucus or conference and greatly alarmed the bondholders and more than anything else induced them to pool.

More than once he told me the same thing in private conversation also.

Interrogatory 5. *There was a meeting* of the bondholders in L. Lanier's room in the Kimball house, on the morning the sale took place, a few hours before, the object of the meeting as explained by L. Lanier was to afford Mrs. Sallie Huguley a chance to come into the pool, but especially for the purpose of authorizing the committee to turn over to the Atlanta national bank the first mortgage bonds which we had surrendered before leaving West Point, said bank to hold same as security or collateral for J. F. Hooper for the ten thousand dollars ($10,000) which L. Lanier had borrowed from Hooper some time before leaving West Point on a rate of one per cent. per month interest I think.

There was a *subsequent meeting* of the bondholders a few days after the sale, when those who had joined in the purchase received certain receipts or acknowledgments entitling them to their *pro rata* interest in the property but no regular stock certificates of stock were issued or ever have been issued so far, to us—the only
395 evidence of such vested interest as was acquired at said sale being so called bonds of the Galeton Cotton Mills Company, of Chambers county, Ala., a corporation which, I learn, has never been incorporated in the State of Georgia, notwithstanding the main building and machinery therein representing the bulk of the property all lie in Georgia.

The said alleged bonds contain no power of sale and no guarantee as to insurance on the part of the trustees, Dallas and Lanier.

A. S. ELLIOTT. [L. S.]

Answered, sworn to and subscribed before us this 30th day of May, 1894.

W. J. KIRBY,
Commissioner. [L. S.]
W. L. WILLIAMS,
Commissioner. [L. S.]

Answers to Cross Interrogatories.

X interrogatory 1. One of the meetings was held about August 26th, 1892, the others as explained in answers to direct interrogatories (No. 3).

The following were present: Hutchinson, Kirby, Blackman, Moore, Dallas, and Lanier, A. S. Elliott, Walter Elliott, Loula Elliott, G. A. Huguley, Mrs. Sallie Huguley. L. D. Hutchinson, chairman; J. T. Kirby, secretary.

X interrogatory 2. The first information I had as to any meeting was from a note, dated August 23d, 1892, from L. Lanier, as per Exhibit "A," hereto attached.

X interrogatory 3. I represented the bonds owned by my family, amounting to $7,000.00. I surrendered said bonds to the committee, consisting of L. Lanier, A. T. Dallas and J. T. Kirby, who were expected to represent me, but L. Lanier seemed to attend to the duty of said committee after said sale.

X interrogatory 4. Haven't seen them since I turned them over to said committee.

X interrogatory 5. Because I believe a great wrong has
396 been perpetrated against the defendants in this case, I testify. I have had no conversation nor correspondence with the attorneys. I have talked with G. A. Huguley, J. H. Nolan and W. T. Huguley, and at the latter's request I volunteer this testimony.

X interrogatory 6. I have already testified fully as to the meetings of the bondholders. (See direct interrogatory No. 3.)

Under the representations made at said meeting I, with others, friendly to the Huguley Manufacturing Co., was led to believe unless we pooled our bonds with the rest of the bondholders we might suffer great loss. We were alarmed and joined in the pool under misapprehension of facts, having consulted no attorney.

X interrogatory 7. As we understood at the time, we were acting in *self defense* having been alarmed about *insurance* and low price the property might bring.

A. S. ELLIOTT. [L. S.]

Answered and sworn to and subscribed before us this the 11th day of June, 1894.

W. J. KIRBY,
Commissioner. [L. S.]
W. L. WILLIAMS,
Commissioner. [L. S.]

"EXHIBIT A."

The West Point iron works.

Established in 1874.

Engines, mills, and cotton presses, shaftings, pulleys, hangers, and couplings. Iron and brass castings of every description.

WEST POINT, GA., *August* 23, 1892.

Mr. A. S. Elliott.

DEAR SIR: A *meeting* of the bondholders of the Alabama & Georgia Manufacturing Company has been called to meet here, Friday 26th inst., and I hope you can be here representing your
397 family bonds, all of them or bring with you the representatives. It's important to agree upon some plan to force the property to be sold for enough to pay off the bonds in full, and it's probable, if there is no understanding it may sell for so little as not to pay over fifty cents on the dollar. It's important for the bondholders to bring their bonds with them.

Yours truly,

L. LANIER.

UNITED STATES OF AMERICA,
Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To R. F. Powell and A. B. Tadlock:

Whereas, there is a certain matter in controversy now pending and to be tried in the said circuit court, between J. J. Robinson, trustee, and Huguley Manufacturing Company *et al.*

And whereas, Mrs. Sarah H. Kyle, is a material witness in said suit on behalf of the petitioners and can not attend said circuit court in person without manifest inconvenience.

Now know ye, that reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said Mrs. Sarah H. Kyle personally to come before you, and after being duly sworn, to examine her concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals to the clerk of said court, at Atlanta, Ga., to the court now in session by June 15th, 1894.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 6th day of June, 1894.

[SEAL.]

O. C. FULLER, *Clerk.*

398 In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee, &c.,
versus
HUGULEY MFG. CO. ET AL.

Petition of defendants to vacate sale and for accounting of purchasers.

Interrogatories for Mrs. Sarah H. Kyle, a resident of Gadsden, Ala., but now staying temporarily at Winston, N. C., a material witness for the petitioners.

Interrogatory 1. Do you know the parties? Where do you reside? Where are you staying now, and how long will you probably be there? What is the name of your present husband, and what was your name before you married him?

Interrogatory 2. Do you know or not know of any meeting or meetings of the bondholders before the sale of the property of the Ala. & Ga. Mfg. Co., in Atlanta, Ga., September 6th, 1892? If you say there was any such meeting or meetings, where were they had, who were present, and what part, if any, did you take in same? What was the purpose of the meeting or meetings?

Interrogatory 3. Was Mr. Lanier present at any of these meetings? What part, if any, did he take in the same? What, if anything, did Mr. Lanier state as to insurance upon the property, and what did he say might be the consequence to the bondholders, if he said anything?

Interrogatory 4. What, if anything, did you say to Mr. Lanier upon the subject of the insurance, and what did he reply?

Interrogatory 5. What did Mr. Lanier say in these meetings indicating what he wished the bondholders to do? What was the result of the meeting, that is, what did the bondholders resolve to do and what did they do?

J. M. CHILTON,
JOHN C. REED,
Sols. for Petitioners.

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Cross Interrogatories.

(1.) When was the meeting held? Who was present? State the names of all the persons present. Who was the chairman of the meeting and who was the secretary?

(2.) How came you to know anything about any meeting? Who informed you?

(3.) Were you a bondholder, and if so, how many of the bonds of the Alabama & Georgia Manufacturing Co., did you have? What

became of your bonds? Who acted for you in getting the money on them after the sale of the property?

(4.) Where are the bonds you held now? When did you last see them?

(5.) How came you to testify in this case? Did you tell counsel for the movants in the case what you would testify in the case? When did you do so? To whom did you talk before testifying in the case?

(6.) State all that you know that goes to show that the bondholders held a meeting for the purpose of devising a plan to keep the property from being sacrificed, and that the bondholders held a meeting to decide on a line of action and conduct for the protection of themselves. Have you done so?

(7.) Don't you know all that was done or said at the meeting inquired about was done to protect the bondholders against loss, if possible?

In the Circuit Court of the U. S., Northern District of Georgia.

J. J. ROBINSON, Trustee, etc., *vs.* HUGULEY MFG. COMPANY ET AL.

Petition of defendants to vacate sale and for accounting of purchasers.

Interrogatories for Mrs. Sarah H. Kyle, a resident of Gadsden, Ala., but now staying temporarily at Winston, N. C., a material witness for the petitioners.

STATE OF TENNESSEE, *County of Monroe.*

400 By virtue of a commission issuing out of the honorable circuit court of the United States for the northern district of Georgia, to us directed, we have caused Mrs. SARAH H. KYLE, the witness in said commission named, to come before us, and being duly sworn, true answers to make to the interrogatories to the said commission annexed, deposes and answers as follows, to-wit:

First interrogatory she answers: I do. Gadsden, Ala., White Cliff Springs, Tennessee, time indefinite. R. B. Kyle. My name prior to my marriage was Sarah H. Huguley.

Second interrogatory: Prior to said sale on Sept. 6th, 1892, *there were such meetings* of the bondholders of the Alabama & Georgia Manufacturing Company. The one I was prevailed upon to attend was held in the rooms of the Young Men's library in the Lanier bank building. Present besides myself G. A. Huguley, J. Elliott, Miss Lula Elliott, A. T. Dallas, L. D. Hutchinson, J. T.

Kirby, L. Lanier and others. This meeting was called by L. Lanier about two weeks in advance of said sale of the property. Having yielded to the importunity of A. T. Dallas and others who knew that I had never at any time been a party to said suit I only consented to attend said caucus somewhat reluctantly. I under protest being actuated largely by curiosity consequently not feeling in sympathy with the real complainants and having no confidence whatever in L. Lanier, who himself I believe did not own one dollar of the bonds, had used the names of others to engineer the suit, I held aloof and although noticing closely all which transpired I took little or no part in the proceedings. The purpose of the meeting as explained by Mr. L. Lanier was to induce those of us bondholders consisting of myself, Mrs. F. H. Huguley, G. A. Huguley, the Elliotts, the Atlanta national bank, J. F. Hooper and D. Jannopoulo who represented about twenty-five thousand dollars of the first mortgage bonds, and who having always promptly collected our interest had never been parties to said suit to join with the real parties complainants consisting of Mrs. Lizzie Yancy, Miss Susan Huguley, the estate of Walker and A. T. Dallas, representing in all about thirty eight thousand dollars of the bonds and pool our bonds for the purpose of buying in the factory property at the sale.

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Third interrogatory. Mr. L. Lanier was present at the meeting I attended, presided over same or acted as chief spokesman, taking a most conspicuous part throughout the entire proceedings. Among other arguments used to induce us to pool with the complaining bondholders was a *positive and unqualified statement made in that caucus by L. Lanier that the mill was at that time not insured and that in case of fire the bondholders would suffer total loss.*

Fourth interrogatory. Upon my insisting that I knew the property was insured because I had been told so by W. T. Huguley one of the trustees and the party chiefly concerned in protecting the property L. Lanier and A. T. Dallas in turn *repeated that the matter of insurance had been investigated and that they knew that there was no insurance on the property.*

Fifth interrogatory. Mr. Lanier urged the bondholders to pool their bonds as explained and in answer to 2nd interrogatory. His scheme as pointed out by him was that a committee should be created or appointed by the bondholders consisting of L. Lanier, A. T. Dallas, J. T. Kirby, into whose hands as agents or trustees all the bonds are to be consigned. Said committee was to be vested with full authority and charged with the duty to bid the full amount of all the bonds so pooled for the joint protection and interest of all subscribers or bondholders. The object thus to be obtained was for them to bid the property up to an amount which would net each bondholder at least par, or in the event the bid prevailed then said committee was of course to see to it that each participant in the purchase should receive his *pro rata* share as represented by the amount of bonds thus contributed in and to

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said purchase. Acting upon *L. Lanier's* advice and representation all the bondholders present *did sign or agree to sign an agreement* to be prepared in accordance with the above by Freeman, Lanier's attorney, except myself. I declined to sign. For my part believing that L. Lanier did not individually own one dollar of the bonds, and believing that he was setting a trap for his victims and especially because I had no earthly confidence in the man, I refused to join with the others in following his leadership in any connection. Accordingly I placed my bonds in the hands of my attorney, Col. N. J. Hammond, to protect my interest in the premises and it was in my interest and protection alone and for no one else except his own, that he submitted that first bid of sixty-five thousand dollars. In face of this bid and despite the fact that I had never been a party to the suit, but on the contrary I had informed J. J. Robinson, trustee, that I repudiated the whole foreclosure proceedings as a fraud, I was yet unjustly taxed on my six thousand dollars of bonds about twenty per cent., realizing only about eighty per cent. cash on the face value of my bonds. With the exception of myself and D. Jannopoulo all the other bondholders whether complainants or non-complainants joined in the purchase of said property at said sale.

Cross Interrogatories.

To first cross interrogatory she answers:

The only meeting I attended was held about two weeks prior to Sept. 6th, 1892.

There were present besides myself, G. A. Huguley, A. J. Elliott, Miss Lula Elliott, A. T. Dallas, J. T. Kirby, L. J. Blackman, L. Lanier, who I understood or who claimed the bonds by Mrs. Lizzie Huguley Yancy, and Miss Susie Huguley and others present whose names I do not now recollect. L. Lanier was chairman and J. T. Kirby was secretary.

403 To second cross interrogatory she answers: I was notified to attend the meeting by A. T. Dallas and requested to attend by Stephen Elliott.

To third interrogatory she answers: I was a bondholder owning six thousand dollars of the first mortgage bonds of the Alabama & Georgia Manufacturing Company's bonds as already explained in my answer in the direct interrogatories. Upon my refusal to join in Mr. Lanier's proposed pool with the complaining bondholders, I then placed my bonds in the hands of my personal attorney, Col. N. J. Hammond. After my attorney, Col. Hammond had collected about eighty per cent. of my bonds, after deducting his fee of one hundred and fifty dollars for attending to the matters he remitted me a check for the balance returning to me at the same time all of my bonds of the Alabama & Georgia Mfg. Co. with the following indorsement on each "Paid on this bond under decree of confirmation of sale by the United States circuit court, case Robinson, trustee *vs.* Alabama & Georgia Mfg. Co., of date Sept. 16, 1892, the sum of $425,168.3-100.

This amount covers bond, coupon and interest, to date, signed, A. E. Buck, commissioner.

Fourth cross interrogatory she answers: All of said bonds except one are now in my safe in West Point, Ga., or were then when I saw them about 18 months ago. The one referred to in the hands of W. T. Huguley.

Fifth cross interrogatory she answers: I am testifying in this case of my own accord and from a sense of duty, because I desire to contribute all I can toward undoing a great wrong, which I know L. Lanier has perpetrated not only against his business rivals W. H. Huguley & Co. and the Huguley Mfg. Co. but also against myself and other bondholders representing about $25,000.00 of said bonds who were abundantly satisfied with our investment in said bonds and the ample security and inviting interest paid us. I never told
404 counsel for movants anything. Having had no conversation with them. I have had conversations with Mr. W. T. Huguley and my attorney Col. Hammond and perhaps others in connection with the foreclosure proceedings.

Sixth cross interrogatory she answers: In my answer to the direct interrogatories propounded I have already told all I know concerning the meeting of the bondholders and the object of same. Holding bonds secured by first mortgage of $65,000 on a property whose plans alone had cost over $320,000, whose main building and machinery therein and alone was insured for $200,000 of which the 1st $65,000 had been set apart for the bondholders, representing as security whose interest had always been paid promptly to the day when due presentment was made at the proper time and at the proper place and to a proper person, I for one fail to see in the first place the common sense for any bondholder allowing the use of his name by L. Lanier in instituting any foreclosure at all. I certainly fail to see any cause for the grave apprehensions felt and the extraordinary precautions urged by L. Lanier in the meetings to the end that loss might be averted to the bondholders from a sale which had been brought about by their own folly. Therefore I for one never saw either occasion or necessity of devising a plan to keep the property from being "sacrificed." I could not conceive how such a "sacrifice" was possible at least as to these bondholders who had never been parties to said suit, unless indeed such sacrifice should result from their property being eaten up by court cost of which I had been already taxed unjustly about 20 per cent. of my holdings.

I have stated all I know of the meetings referred to in my answers to direct and cross interrogatories.

Seventh cross interrogatories she answers: I do not know that all that was done or said at the meeting inquired about was done to protect the bondholders against loss. On the contrary while urging his scheme of pooling for the nominal and ostensible purpose
405 of protecting the bondholders, from all which transpired at said meeting and in connection therewith, particularly in view of the reckless misstatements made about insurance etc., I was

impressed with the belief that the real and sole purpose of L. Lanier who was most conspicuous in all that was done or said was to secure the control of the mill property without contributing if possible one dollar in and to said purchase. How accurate was the conclusion and how well Mr. L. Lanier succeeded is shown by the fact that after saddling on his victims court costs aggregating about 20 per cent. of their holdings I am informed that in recognition of the vested rights of ownership acquired at said sale L. Lanier has so far distributed a so called bond, in reality nothing more than a mortgage of the Galeton cotton mills of Chambers county, Ala., in proportion to a like amount of the original first mortgage of the Alabama & Georgia Manufacturing Company bonds. Said cotton mill bonds, as witness is informed (and witness holds one of the bonds) is without power of sale and of no guarantee from the trustee that the insurance will be kept up. Witness is further informed that said L. Lanier and who she believes never contributed one dollar in and to said purchase, either of bonds or money has issued to himself all of the capital stock of the Galeton cotton mills, except $500 each, issued to A. T. Dallas and L. J. Blackman, which said capital stock in equity should have been distributed *pro rata* among those of the bondholders of the Alabama & Georgia Manufacturing Company who had really contributed to the purchase of the property.

SARAH H. KYLE.

Answered, sworn to and subscribed before us this the 13th day of June, 1892, at White Cliff Springs, Monroe county, Tennessee.

R. F. POND. [SEAL.]
A. B. TADLOCK. [SEAL.]

406 Number 7. Par value, $100.00 each. Shares, 46.

This certifies that G. A. Huguley is entitled to forty-six shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec'y.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point, Mfg. Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my

true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10, 1892.

G. A. HUGULEY.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 8. Par value, $100.00 each. Shares, 34.

This certifies that E. J. Nolan is entitled to thirty-four shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec'y.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Black-
407 man, my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10, 1892.

E. J. NOLAN.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 7. Par value, $100.00 each. Shares, 5.

This certifies that Mrs. Susan Elliott is entitled to five shares of the capital stock of the Galeton cotton mills, transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., October 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all my right, title and interest in the within shares of stock, and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., October 10th, '92.

MRS. SUSAN ELLIOTT.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 10. Par value, $100.00 each. Shares, 20.

This certifies that J. E. Elliott is entitled to twenty shares of the capital stock of the Galeton cotton mills, transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

408 West Point, Ga., October 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company, with full power of substitution.

West Point, Ga., October 10th, '92.

JAMES E. ELLIOTT.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKBURN.

Number 10. Par value, $100.00 each. Shares, 15.

This certifies that Miss Lula Elliott is entitled to fifteen shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in — name to transfer same on books of the company with full power of substitution.
West Point, Ga., Oct. 10th, 1892.

Witness: LULA ELLIOTT.
L. LANIER.

I authorize H. S. Sears to make this transfer.
L. J. BLACKMAN.

409 Number 12. Par value, $100.00 each. Shares, 35.

This certifies that L. D. Hutchison is entitled to thirty-five shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.
West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, *Sec'y.* L. LANIER, *Pres.*
[Seal Galeton Cotton Mills, West Point, Ga.]
Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.
West Point, Ga., Oct. 10th, 1892.

Witness: L. D. HUTCHISON.
L. LANIER.

I authorize H. S. Sears to make this transfer.
L. J. BLACKMAN.

Number 11. Par value, $100.00 each. Shares, 23.

This certifies that R. M. Hackney is entitled to twenty-three shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.
West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, *Sec'y.* L. LANIER, *Pres.*
[Seal Galeton Cotton Mills, West Point, Ga.]
Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman
410 my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

R. M. HACKNEY.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 1. Par value, $100.00 each. Shares, 12.

This certifies that L. J. Blackman is entitled to twelve shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec'y.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN.

Witness:
L. LANIER.
L. J. BLACKMAN.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 2. Par value, $100.00 each. Shares, 58.

This certifies that A. T. Dallas is entitled to fifty-eight shares of the capital stock of the Galeton cotton mills transferable only
411 on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec'y.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign, and transfer unto West Point Mfg. Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.
West Point, Ga., Oct. 10, 1892.

A. T. DALLAS.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 3. Par value, $100.00 each. Shares, 23.

This certifies that A. D. Moore and J. T. Kirby are entitled to twenty-three shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.
West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, *Sec'y.* L. LANIER, *Pres.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.
West Point, Ga., Oct. 10th, 1892.

A. D. MOORE.
JAS. I. KIRBY.

412 Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 13. Par value, $100.00 each. Shares, 334.

This certifies that L. Lanier is entitled to three hundred and thirty-four shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.
West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, *Sec'y.* L. LANIER, *Pres.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all my right, title and interest in within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

L. LANIER.

Witness:
POMP S. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 5. Par value, $100.00 each. Shares, 22.

This certifies that A. D. Moore is entitled to twenty-two shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec'y.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

413 Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

A. D. MOORE.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 6. Par value, $100.00 each. Shares, 23.

This certifies that J. T. Kirby is entitled to twenty-three shares of the capital stock of the Galeton cotton mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. LANIER, *Pres.*

L. J. BLACKMAN, *Sec'y.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Cancelled.

Endorsed on back.

For value received I hereby sell, assign and transfer unto West Point Mfg. Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

JOSEPH I. KIRBY.

Witness:
L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

414 Number 14. Value of shares, $100.00 each. Shares, 650.

This certifies that the West Point Manufacturing Company is entitled to six hundred and fifty shares of the capital stock of the Galeton cotton mills, transferable on the books of the company in person or by attorney on surrender of this certificate properly endorsed.

West Point, Ga., June 14th, 1893.

W. C. LANIER, *Pres.*

HORACE S. SEARS, *Treasurer.*

[Seal Galeton Cotton Mills, West Point, Ga.]

Report of A. E. Buck, Master, as to Outstanding Bonds.

J. J. ROBINSON, Trustee,
versus
ALA. & GA. MFG. CO.

Final decree and foreclosure and sale thereunder in the U. S. circuit court, northern district of Ga.

Report of A. E. Buck, Commissioner.

J. J. ROBINSON, Trustee,
versus
ALA. & GA. MFG. CO.

Final decree, foreclosure, and sale thereunder in the U. S. circuit court, northern district of Georgia.

To the honorable the circuit court of U. S., northern district of Ga.:

The following statement of A. E. Buck shows that he acted as special master by consent of counsel for parties at interest to ascertain the amount due on each of the outstanding first mortgage bonds

and coupons attached thereto, of the said Alabama & Georgia Manufacturing Company and he reports to the court that all of said bonds and outstanding coupons were placed in his hands for purpose of ascertaining amounts due thereon by the persons named in the following statement, which statement contains the num-
415 bers, amounts, owners of bonds, and amount due on each for principal and interest, to-wit:

L. Lanier,—$15,000.00—coupons and interest 2½ years and 2½ months, $3,250.00,—interest on coupon $302.75, indebtedness $18,552.75—80.43—$14,921.97. (Numbers of bonds, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66.)

L. Lanier,—$8,000.00, coupons and interest 2½ years and 2½ months $1,733.33, interest on coupon $161.45, indebtedness $9,894.78—80.43—$7,958.37. (Numbers of bonds 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.)

A. T. Dallas, $5,000.00. Coupons and int. 2½ years and 2½ mos. $1,083.33. Int. on coupon, $110.92. Indebtedness, $6,194.25—80.43—$4,982.03. (Numbers of bonds 89, 90, 91, 92, 93, 94, 95, 96, 97, 98.)

E. J. Nolan, $3,000.00 Coupon and int. 2½ years and 2½ mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,984.39. (Numbers of bonds 105, 106, 107, 108, 109, 110.)

Hackney, $2,000 & Blackman, $1,000, $3,000.00. Coupons and int. 2½ years and 2½ mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,894.39. (Numbers of bonds 11, 12, 13, 14, 7, 8.)

L. D. Hutchison $3,000.00. Coupons and int. 2½ years and 2½ mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,984.39. (Number of bonds 99, 100, 101, 102, 103, 104.)

Julia A. Walker, $2,000.00. Coupons and int. 2½ years and 2½ mos. $433.33. Int. on coupons $40.36. Indebtedness $2,473.69—80.43—$1,989.58. (Numbers of bonds 5, 6, 15, 16.)

A. D. Moore, $2,000.00. Coupons and int. 2½ years and 2½ mos. $433.33. Int. on coupons $40.36, $2,473.69—80.43—$1,989.58. (Numbers of bonds 1, 2, 3, 4.)

416 Lou E. Kirby $2,000.00. Coupons and int. 2½ years and 2½ mos. $433.33. Int. on coupons $40.36, $2,473.69—80.43—$1,989.58. (Numbers of bonds 17, 18, 19, 20.)

G. A. Huguley $1,000.00. Coupons and int. 2 years and 2½ mos. $176.66. Int. on coupons $18.20, $1,194.86—80.43—$961.02. (Numbers 9, 10.)

Atlanta nat'l bank, $2,000.00. Coupons and int. 2 years and 2½ mos. $353.32. Int. on coupons $36.40, $2,389.72—80.43—$1,922.05. (Numbers of bonds 125, 126, 127, 128.)

G. A. Huguley $1,500.00. 8½ mos. $85.00, .87, $1,585.87—80.43—$1,275.51. (Numbers of bonds 119, 120, 121.)

J. F. Hooper, $1,500.00, 8½ mos. $85.00, .87, $1,585.87,—80.43—$1,275.51. (Numbers of bonds 122, 123, 124.)

L. Lanier, $1,500.00, 8½ mos. $85.00, .87, $1,585.87,—80.43—$1,275.51. (Numbers of bonds 81, 82, 83.)

L. Lanier, $1,500.00 Coupons and int. 8½ mos. $85.00. Int. o coupons 87. Indebtedness $1,585.87—80.43—$1,275.51. (Number of bonds 77, 87, 88.)

Lula A. Elliott, $1,500.00 8½ mos. $85.00, .87 $1,585.87—80.43—$1,275.51. (Numbers of bonds 84, 85, 86.)

J. E. Elliott, $2,000.00 Indebtedness $2,114.40—80.43—$1,700.68 (Numbers of bonds 76, 79, 78, 80.)

Mrs. S. Elliott, $500.00. Indebtedness $528.62—80.43—$425.16 (Number of bond 75.)

F. H. Huguley $2,000.00, 8½ mos. $113.32, $1.16, $2,114.48—80.43—$1,700.67. (Number- of bonds 111, 112, 113, 114.)

Mrs. S. H. Huguley, $6,000.00, 8½ mos. $339.96, $3.48, $6,343.44—80.43—$5,102.02. (Numbers of bonds 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118.)

L. Lanier, $1,000.00, 8½ mos. $56.66, .58, $1,057.24—80.43—$850.33. (Numbers of bonds 129, 130.)

W. C. & L. Lanier 80.00, 4 coupons 3.20, 83.20, 80.43, 66.91.

417 $65,080.00, $11,003.23, $946.67, $76,949.90, $61,897.50.

Proceeds of sale..... $66,000.00

To disposition of proceeds:

To credits entered on bonds and coupons.....	$61,897.50	
To B. F. Abbott & Co., attorney fees.....	1,000.00	
To Dorsey, Brewster & Howell.....	1,000.00	
To Denson.....	600.00	
To J. J. Robinson, trustee.....	500.00	
To costs paid clerk of court.....	230.50	
To advertising Atlanta Constitution.....	160.00	
To advertising Atlanta Journal.....	90.00	
To commissioners taking depositions.....	120.00	
To commissioners' sale fees.....	400.00	
		$66,000.00

All of said bonds were used by purchasers of the property in part payment of the purchase money except the bonds numbered as follows 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118: and which were in hands of Messrs. N. J. & T. A. Hammond, attorneys for Mrs. S. H. Huguley. The foregoing statement is correct as to all recital of facts therein contained. Petitioner has now all of said bonds except 67, 68, 70, 71, 72, 73, 74, 115, 116, 117, 118, which he returned to N. J. & T. A. Hammond after having paid in cash and entered thereon each bond the *prorata* share due on said bonds. The amount paid on each bond is entered thereon and is the proper *prorata* share of the proceeds of sale of the property, and he herewith submits the same with this report.

Petitioner prays that this his supplement report be filed and approved and that he be discharged from all further duty and responsibility in said matter.

Respectfully submitted,

A. E. BUCK,
Commissioner.

Filing.—Filed in clerk's office 11 day of March, 1893.

O. C. FULLER, *Clerk.*

418 *Deed of A. E. Buck, Commissioner, to L. Lanier et als.*

UNITED STATES OF AMERICA,
State of Georgia, Fulton County.

Whereas in obedience to a decree of the circuit court of the United States for the northern district of Georgia at the suit of J. J. Robinson, trustee *vs.* The Alabama & Georgia Manufacturing Company *et al.* — which decree dated 30th day of May, 1892, A. E. Buck was appointed to make sale of the property herein after described and whereas said A. E. Buck did advertise said property and expose the same for sale at public outcry before the court house door of Fulton county Georgia on the first Tuesday in September, 1892, within the legal hours of sale when the same was knocked off to L. Lanier, A. T. Dallas and T. J. Kirby as trustees for all the bondholders of said Alabama & Georgia Manufacturing Company except six thousand (6,000) dollars paid by S. N. Huguley and one thousand (1,000) dollars by another person, at and for the sum of sixty-six thousand (66,000) dollars, and whereas, said A. E. Buck has made report of said sale to said circuit court and the same has been confirmed by decree of said court and said Buck has been directed to make deed to said purchaser. Now in compliance with said decree and in consideration of sixty-six thousand (66,000) dollars to him paid by L. Lanier, A. T. Dallas and T. J. Kirby, as trustees as aforesaid the receipt whereof is hereby acknowledged the said A. E. Buck commissioner of said court has this day granted, bargained, sold and conveyed unto said L. Lanier, A. T. Dallas and T. J. Kirby as trustees all of the estate, title and interest to and of said Alabama & Georgia Manufacturing Company to the following described property. All of a large island in the Chattahoochee river designated as Island Number Six (6) containing one hundred and forty three (143) acres more or less, also Island Number — (9) containing seven (7) acres
419 more or less, also a small island between Island Number Nine (9) and Number Six (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the three above described islands being in the twentieth (20) district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded

on the east by said river, beginning at a point on the west bank of the river nearly opposite the center of the seven acre — at a black gum at or near a place known as Sell's corner; thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Jos. Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake; thence a line to a branch to said stake, and thence a line down said branch to said river and then down the western bank of said river to the beginning point, containing sixty-five and twenty-three one hundredths (65 23-100) acres more or less lying and being in Chambers county of the State of Alabama and being part of section twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as the forty foot (40) right of way from the factory building to the public road leading to the public road leading from the factory building to the public road, leading from West Point, Georgia, to Beulah, Alabama, at any point where the factory company may locate it including all tenements and improvements, including the cotton mill and all machinery therein or thereto belonging and all water privileges, riparian rights now or hereafter owned and enjoyed by the said Alabama & Georgia factory. To have and to hold the said property together with all the rights, members and appurtenances unto them the said bargainers and their successors in trust in as full and ample manner as the said Alabama & Georgia Manufacturing Company or any person holding under or through it, might or could have enjoyed the same. In testimony whereof the said A. E. Buck, said commissioner, hath this day set and affixed his seal this September 16th, 1892.

A. E. BUCK, [SEAL.]
Commissioner.

420 Signed, sealed and delivered in the presence of

O. C. FULLER,
U. S. Commissioner for the Northern District of Georgia.
O. E. MITCHELL,
N. P., Fulton County, Georgia.
B. N. ABBOTT.

Filed in office for record Oct. 11th, 1892, and was duly recorded Oct. 12th, 1892.

J. J. ROBINSON,
Judge of Probate.

STATE OF ALABAMA, }
Chambers County. }

I, Lloyd Robertson, judge of probate court in and for said county in said State hereby certify that the foregoing is a true and correct copy of deed A. E. Buck, commissioner, to L. Lanier, *et als.*, as recorded in vol. 22 page 458 record of deeds.

Given under my hand and seal of office this 9th day of June, 1894.

[SEAL.] LLOYD ROBERTSON,
Judge of Probate.

Deed of L. Lanier et als., Trustees of Bondholders, to Galeton Cotton Mills.

GEORGIA, }
Troup County. }

This indenture made this the 10th day of October, 1892, between L.Lanier, A. T. Dallis and Jos. T. Kirby, trustees for the bondholders of the Alabama and Georgia Manufacturing Company of the one part, and the Galeton cotton mills, a corporation duly established under the laws of Alabama of the other part witnesseth; that whereas under a decree of the circuit court of the United States for the northern district of Georgia in the suit of J. J. Robinson, trustee, *vs.* The Alabama and Georgia Mfg. Co., *et als.*, A. E. Buck was appointed to make sale of the property of the Alabama & Georgia Mfg. Co., and at the sale of said property the first Tuesday in September, 1892, the said L. Lanier, A. T. Dallas and Jos. T. Kirby became the purchasers of said property as trustees for the holders of the bonds of the said Alabama & Georgia Mfg. Co., and
421 whereas said bondholders have organized a corporation under the laws of the State of Alabama under the name and style of the Galeton cotton mills, said bondholders of said Alabama & Georgia Mfg. Co., constituting the stockholders of Galeton cotton mills at a meeting regularly called and held at the office of said corporation on the 10th day of Oct., 1892, by unanimous vote all of said bondholders being present or represented, authorized and instructed the said L. Lanier, A. T. Dallas, Jos. T. Kirby, trustees as aforesaid to execute a deed to the aforesaid property to the said Galeton cotton mills. Now therefore for and in the consideration of — dollars to us in hand paid by the said Galeton cotton mills the receipt whereof is hereby acknowledged the said L. Lanier, A. T. Dallas and Jos. T. Kirby trustees as aforesaid have granted, bargained sold and conveyed and do by these presents grant, bargain, sell and convey unto the said Galeton cotton mills and its assigns the following described property to-wit.

All of a large island in the Chattahoochee river designated as Island No. Six (6) containing one hundred and forty three (143) acres more or less. Also Island Number Nine (9) containing seven (7) acres more or less. Also a small island between Islands Number Nine (9) and Number — (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the above described islands being in the twentieth district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the

Chattahoochee river opposite the above described island bounded on the east by the west bank of the river nearly opposite the seven (7) acre island at a black gum at or near a place known as Sell's corner; thence a straight line to a point where the lands owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known there as the Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in a line down said branch
near said stake, and thence in a line down said branch to said
422 river, and thence down the western bank of the river to the beginning point containing sixty-five and 23-100 (65.23) *one hundredths* acres more or less lying and being in Chambers county *of State of Alabama and being* part of section- twenty eight (28) and twenty nine (29) township twenty one (21), range twenty nine (29) as well as a forty (40) foot right of way from the factory building to a public road leading from West Point, Georgia to Beulah, Alabama at any point where the factory company may locate it; including tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging and all water privileges and riparian rights owned and enjoyed by the Alabama & Georgia Manufacturing Company. To have and to hold the said property together with all rights, members and appurtenances to the same belonging or in any wise appertaining unto it the said Galeton cotton mills and its assigns in as full and ample manner as the said Ala. & Ga. Mfg. Co. or any person holding under or through it might or could have enjoyed the same.

In testimony whereof the said L. Lanier, A. T. Dallas and Joseph T. Kirby, trustees as aforesaid have hereunto set their hand- and affixed their seals the day and year first above written.

A. T. DALLAS, [L. S.]
L. LANIER, [L. S.]
JOSEPH T. KIRBY, [L. S.]
Trustees.

Signed, sealed and delivered in presence of witness:

J. C. McKINZIE.
PHIL LANIER,
Notary Public.

Filed in office for record October 11th, 1892, and was duly recorded October 12th 1892.

J. J. ROBINSON,
Judge of Probate.

423 STATE OF ALABAMA, }
Chambers County. }

I, Lloyd Robertson, judge of probate court, in and for said county, hereby certify that the foregoing is a true and correct copy of deed

from L. Lanier, *et als.*, trustees of bondholders to Galeton cotton mills as recorded in vol. 22, page 460 of record of deeds.

Given under my hand and seal of office this June 9th, 1894.

[SEAL.] LLOYD ROBERTSON,
Judge of Probate.

Deed of Galeton Cotton Mills to Lanier et al.

STATE OF GEORGIA,
Troup County.

This indenture made this 10th day of October in the year 1892, between the Galeton cotton mills, a corporation duly established under the laws of Alabama, and having a place of business at West Point, Georgia, of the one part, and L. Lanier of Chambers county, Alabama, and A. T. Dallas, of Troup county, Georgia, of the other part witnesseth: That on the 10th day of October, 1892, at a meeting regularly and duly called and held in the office of the said Galeton cotton mills, in West Point, Georgia, the stockholders of said corporation did by a unanimous vote, all the stock of the corporation being represented, authorize the board of directors of said corporation to issue bonds to the aggregate sum of sixty-five thousand dollars payable in gold coin to mature in five years bearing interest at the rate of eight per cent. per annum payable semi-annually in gold coin, said bond to be secured by a first mortgage on the entire plant, property, rights and franchises both present and future acquired of the Galeton cotton mills.

And whereas the said Galeton cotton mills has this day, through its legally constituted officers pursuant to the authority conferred in the aforesaid resolution, issued a series of one hundred and twenty bonds of the denomination of five hundred dollars each, and
424 fifty of one hundred each, of like tenor and date aggregating sixty-five thousand dollars, and numbered consecutively from one to one hundred and seventy inclusive, payable in gold coin of the United States of the present standard of weight and fineness at the bank of W. C. & L. Lanier, West Point, Georgia, on the first day of October, 1897, with interest on the same at the rate of eight per cent. per annum payable semi-annually in like gold coin on the first day of April and October of each year at the bank of W. C. & L. Lanier, West Point, Georgia.

Now for and in consideration of the sum of five dollars by the said L. Lanier and A. T. Dallas, the trustees in said bonds named, to the said Galeton cotton mills paid at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged as well as for the better securing the payment of the aforesaid bonds aggregating sixty-five thousand dollars, and interest coupons thereto attached, the said Galeton cotton mills, hath granted, bargained and sold, and doth by these presents grant, bargain and sell

to the said L. Lanier and A. T. Dallas, in trust for the holders of said bonds, the following described property, to wit:

All of a large island in the Chattahoochee river designated as Island Number Six (6) containing one hundred and forty-three (143) acres more or less. Also a small Island Number Nine (9) containing seven (7) acres more or less. Also a small island between Islands Number Nine (9) and Number Six (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the above described islands being in the twentieth district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described island bounded on the east by the west bank of the river nearly opposite the seven (7) acre island at a black gum — or near a place known as Sell's corner; thence a straight line to a point where the lands owned in 1868 by Mrs. Freeman, Job Ross and James Campbell — then as the
425 Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, thence in a line down said branch to said river, and thence down the western bank of said river to the beginning point containing sixty-five and 23-100 (65.23) *one hundredths* acres more or less lying and being in Chambers county of the State of Alabama and being part of section- twenty-eight (28) and twenty-nine (29). township twenty-one (21), range twenty-nine [29], as well as forty [40] foot right of way from the factory building to a public road leading from West Point, Georgia to Beulah, Alabama, at any point where the factory company may locate it including all tenements and improvements with the cotton mill. Also the following machinery, to wit: Three [3] Leffel water wheels, two [2] pumps, one [1] boiler, four pickers, sixty-six [66] cards, railway heads, drawing frames, slubbers, speeders, warpers, size kettles, slashes, looms, baling press and cloth room machinery, shafting, hangers, pulleys, and the entire equipment necessary for a cotton mill now owned and used by said Galeton cotton mills or that may be hereafter purchased and added thereto. Also all water privileges and riparian rights now owned and enjoyed by the said Galeton cotton mills or that may be hereafter acquired, with all the rights, members and appurtenances to said bargained premises belonging or in any wise appertaining.

To have and to hold said bargained property, machinery, rights and franchises to the said L. Lanier and A. T. Dallas in trust for the holders of the said bonds forever.

And the said Galeton cotton mills the said bargained premises, machinery and franchises unto the said L. Lanier and A. T. Dallas as trustees as aforesaid will warrant and forever defend against the claims of all other persons whatsoever.

It is hereby agreed that should the said Galeton cotton mills fail to pay any installment of interest on the aforesaid bonds,
426 for sixty (60) days after the same becomes due and payable according to the tenor of the interest coupons to said bonds

attached then, in that event, the holders of said bonds may declare and treat the entire bonded debt as due as though said bonds had matured and the said L. Lanier and A. T. Dallas as trustees may proceed to sell the property herein mortgaged at public sale on the premises after having advertised the same for ten (10) days in some newspaper published in Atlanta, Georgia, and execute title to said property to the purchaser or purchasers at said sale and apply the proceeds of said sale to the payment of the expenses incident to said sale and the payment of the bonds herein mentioned and secured by this mortgage with all interest that may be due thereon and if there be a surplus or balance remaining after paying the principal and interest due to the bondholders in full, said surplus shall be paid over to the said Galeton cotton mills or its agent.

And to further protect the bondholders in case of loss by fire it is hereby agreed that insurance shall be placed on the property to the extent of the bonds with loss if any first payable to the holders of said bonds as their interest may appear.

The Galeton cotton mills hereby reserve the right to call in and pay off said bonds, or any part of them, at any time after giving sixty days' notice, and in the event that only a part of said bonds shall be called at any one time they must be called in their regular order beginning with number one, and the interest on the bonds called in under the provisions of this clause of this mortgage shall cease after the expiration of the sixty days' notice herein required, and the holders of the bonds so called in for payment and cancellation shall not be entitled to any interest after sixty days from the date of said notice.

Provided nevertheless that if the said Galeton cotton mills shall well and truly pay, or cause to be paid, unto said bond-
427 holders, their heirs and assigns, the principal and interest of the debt secured by this mortgage at the time and place the same becomes due and payable, according to the tenor of said bonds and interest coupons thereto attached, then this mortgage as well as said bonds and interest coupons and the right to the property herein conveyed shall cease, determine and be void to all interest and purposes.

In testimony whereof the said Galeton cotton mills, by its legally constituted officers and agents has hereunto set its hand and affixed its seal the day and year first above written.

L. J. BLACKMAN, *Sec.* [L. S.]
L. LANIER, *Pres.* [L. S.]

Signed, sealed and delivered in presence of

PHIL LANIER, *Not. Pub.* [SEAL.]
J. C. McKENZIE.

THE STATE OF ALABAMA, *Chambers County,* } *ss:*

I hereby certify that this instrument was filed in my office for record, on the 11th day of Oct. 1892, and was duly recorded on the 12th day of Oct. 1892, in vol. 46, page 1–3 of record of mortgages.

J. J. ROBINSON,
Judge of Probate ($2.70).

GEORGIA, HARRIS COUNTY.

Filed in office Oct. 14, 1892, 5 p. m. Recorded in record of deed, vol. P., page 289, Oct. 15, 1892.

A. F. TRUETT, *C. S. C.*

Amended Answer.

U. S. Circuit Court, Northern District Georgia.

ALABAMA, &c., MFG. CO. ET AL. *vs.* J. J. ROBINSON, Trustee, ET AL. } Petition, &c.

And now come the defendants and amend their answer and aver as follows:

The owners of the Galeton cotton mills state they did on the
428 10 day of October, 1892 assign and transfer to the West Point Mfg. Co. all of the stock of said cotton mills in consideration of the sum of $16,600 *dollars* in cash paid and an agreement on part of the West Point Mfg. Co. to assume the mortgage debt of said Galeton cotton mills to the amount of 65,000 dollars and an agreement to pay the said annual interest to become due from time to time on said bonded debt.

After said Lanier, Dallas and Kirby had transferred the interest purchased by them as alleged in the answer to said Galeton cotton mills the said cotton mills executed and delivered to L. Lanier and A. T. Dallas a deed of trust covering all of said factory property for the purpose of securing the negotiable mortgage bonds of said company to the amount of said $65,000 *dollars* and interest and said West Point Mfg. Co. assumed said debt and interest in consideration of the transfer of said stock as above alleged. Said West Point Mfg. Co. has paid the interest on said bonds as the same has accrued. Said bonds so issued are payable to bearer and some of them are in the hands of *bona fide* holders not parties to the original transactions referred to.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, *Defendant's Sols.*

Order Entering Mandate of Appellate Court and Setting Aside Foreclosure.

In the Circuit Court of the United States, Northern District of Georgia, March Term, 1892.

J. J. ROBINSON ET AL., Trustee,
vs.
ALA. & GA. MFG. CO.
} Bill, &c. Decree. Appeal. Mandate of Reversal.

This cause having been carried by appeal to the circuit court of appeals, and the decree of this court reversed, it is now, on motion of defendant,

Ordered: That the mandate from said circuit court of
429 appeals be entered on the minutes of this court, and the final decree of this court in said cause, in accordance with said order of reversal, be set aside.

The question as to the affect of the sale of the property in controversy, and the rights of the purchasers and present holders thereof is reserved and will be disposed of by supplemental order.

In open court, this 20th of June, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office, June 20th, 1894.

C. C. FULLER, *Clerk.*

Opinion of Court.

In the Circuit Court of the United States, Northern District of Georgia.

ALABAMA & GEORGIA MANUFACTURING CO.,
The Huguley Manufacturing Co.,
vs.
L. LANIER.
} Motion for Restitution.

This is a motion for restitution of property sold under a decree of this court which was subsequently reversed. The sale was under a decree of foreclosure of a mortgage or deed of trust, at the suit of J. J. Robinson, trustee, for certain bondholders, whose bonds were secured by the mortgage or deed of trust.

An appeal was allowed on motion of counsel who represented the defendant corporation in the foreclosure proceeding, on the 28th day of July, 1892. This appeal was not prosecuted and no supersedeas bond was given before the expiration of the time allowed by law for

supersedeas. Subsequently to-wit: on November 21st, 1892, on motion of other counsel who came into the case, an appeal was allowed without supersedeas; the assignment of errors was filed and appeal bond for costs was given.

Between the allowance of the first and second appeal, the
430 property was advertised for sale and was sold by a commissioner appointed by the court, and the property purchased by L. Lanier and others, as trustees for the bondholders. Ten thousand dollars in cash was paid into the hands of the commissioner, being the amount required by the decree to be paid in cash, in the event the property should be purchased by the bondholders. The sale was on the first Tuesday in September, and on the 16th day of September, the sale was confirmed.

On the hearing in the circuit court of appeals, the decree of this court was reversed. After the reversal and the receipt of the mandate to this court, of the appellate court, motion was made by counsel for the Huguley Company for restitution of the property sold as above set forth.

A question of considerable difficulty is presented by this motion, and it has been carefully and fully argued by counsel for the movants and for the purchasers, and has been fully and elaborately discussed in briefs furnished the court since the oral argument.

It is contended in the first place, that the ground upon which the right to reversal was placed by the appellate court, would not have been entertained by that court, if what had occurred in this court as to that matter, had appeared in the record. The difficulty about that is, that whatever may have occurred in this court, as to how far it may have operated as a waiver on the part of the defendant company to have an accounting of the bonds which came within the ruling of the court as to non-payment of interest-coupons, it did not appear in the record and the appellate court knew nothing of it, and the judgment of that court was, that by the failure to have such accounting, the decree foreclosing the whole issue of the bonds was erroneous. So that the argument that that should influence the discretion of the court here in the matter of restitution, can not be considered. The judgment stands reversed and the reversal
431 is just as effectual for the purposes of the motion now under consideration, as if it had been upon the ground that the court erred in not allowing, as a matter of law, the three days of grace claimed by defendants in addition to the six months provided in the contract.

It is next claimed that the action of the Huguley Manufacturing Company and especially of its counsel of record and in court, was such in connection with the sale of the property, at the sale, and on the confirmation of the same, as to stop it from claim- restitution of the property sold. Even if counsel for the Huguley Company could bind it by an express agreement that there should be no subsequent appeal and no subsequent effort to recover the property, no act is proven on the part of counsel which goes to this extent. The opin-

ion of the leading counsel for the defendant, given at the sale or about the time of the sale, that the title acquired at the sale would be good, is no more than the opinion of any other lawyer as to the legal effect of the proceedings. His presence at the sale has no greater effect, and certainly his representation of certain bondholders and acceptance for them of the amount due on their bonds, can not in any way operate as an estoppel against the Huguley Manufacturing Company. On the whole I see nothing whatever in the facts set up here, which is sufficient to operate as an estoppel against the *right of the Huguley Manufacturing Company* to make and prosecute this motion for restitution.

The next and principal question is, as to how far the holders, at present, of this property are protected by the sale and the proceedings with reference to the property which occurred subsequently. It appears that after the purchase of the factory property by Lanier and others, as trustees for the bondholders, that certain bondholders were not willing to come into the scheme of reorganization which the bulk of the bondholders had assented to, and it was necessary to pay them in cash, the *pro rata* amount which their bonds would be entitled to, from the price realized at the sale. Then a new
432 corporation was organized called the Galeton cotton mills, and holders of bonds secured by the mortgage under which the property had been sold, were given stock in the new corporation, the total amount of such stock amounting to $65,000.00. Bonds for an equal amount were issued and delivered to such persons by the Galeton cotton mills. The stock was all transferred by the various holders of it to the West Point Manufacturing Company which appears to be now the holder of it.

The authorities are somewhat in conflict as to how far a sale by virtue of a judgment which is subsequently reversed, conveys title which will protect against a motion for restitution after reversal. It is contended here, and mainly on the authority of the case of Marks *vs.* Cowles 61 Ala., 229 that not only will such restitution be ordered as between the parties to the case, and as against the plaintiff when he has purchased, but also as against the assignee of a party who purchases. It is contended and it is so held in the case named, that the party who purchases at such a sale, gets only a defeasable title, and can convey no greater title to the assignee than he himself obtains. The doctrine of this case would unquestionably require an order of restitution here. The correctness of the rule stated in that case is endorsed in Freeman on Judgments, sec. 484. The question of the right to restitution of property when there has been a reversal of a judgment, by virtue of which a sale is made, has been several times before the Supreme Court of the United States. The last case to which attention has been called, or which has been found, is the case of North Western Fuel Company *vs.* Brock, 139 United States, 216 and while that was a case where it had been held that the judgment was one which the circuit court had no jurisdiction to grant, still former decisions of the Supreme Court are cited and somewhat

discussed. These cases, as well as the cited case by the Supreme Court, seem unquestionably to hold that restitution will be
423 granted on a reversal judgment as between the parties. The conclusion of the opinion is as follows:

"The same doctrine is sustained in the several State courts of the country, all recognizing the power of a court, whose judgment is set aside on its own motion or reversed by order of an appellate tribunal, to direct restitution, so far as practicable, of all property and rights which have been lost by the erroneous judgment." It is urged on behalf of the purchasers of this property, that where there has been a sale *under an execution* by a commissioner acting under a judgment valid and subsisting at the time, that a good and unassailable title is conveyed thereby to a party who purchases equally with strangers. The principal case relied on in the argument of this contention, is the case of South Fork Canal Co., *v.* Gordon, 2 Abb. 479–488, decided by Justice Field, and the case to which he refers and from which he quotes, of Parker *v.* Anderson, 5 T. B. Monroe 455. As to the case decided by Justice Field, it is replied that in Galpin *v.* Page 18 Wall 350. Justice Field in delivering the opinion of the court, by the language he used showed his own doubt as to the correctness of the views expressed in South Fork Canal Co., *v.* Gordon *supra*. An examination of the case shows this to be true, and it seems entirely clear that Justice Field did not intend to adhere to the views expressed by him in the South Fork Canal Company case. The other authorities are not in line with what appears to be the great weight of authority on the subject, indeed, with decisions of the Supreme Court of the United States which all seem to be to the effect that, as between parties, restitution will always be awarded where the judgment, by virtue of which sale was made, has been reversed. This ruling would unquestionably extend to such beneficiaries as bondholders who are represented in the proceedings by a trustee, where the bondholders are the purchasers. So it must be taken as established by undoubted authority, and indeed by
434 controlling authority, that restitution would necessarily be directed in this case as against the bondholders who originally purchased the property at the sale.

Now has there been such change in the title to the property as will protect it against restitution to the Huguley Manufacturing Company, the original owner. There would be no difficulty whatever, as to the Galeton cotton mills as it was originally organized, with the stock in the hands of the bondholders who purchased at the foreclosure sale. The real trouble is that the holding of the stock is changed from these parties to the West Point Manufacturing Company. The West Point Company is not a party here, but the fact of the transfer of the stock has been put in evidence on the hearing of this motion by the Galeton cotton mills for the purpose of showing that its stock had gone into other hands, and that the parties to this case are not the real owners of the stock and consequently of the property. L. Lanier appears by the evidence to be

the president of the Galeton cotton mills, and secretary and treasurer and active official, so far as this transaction is concerned, of the West Point Manufacturing Company. He was also the principal member of the purchasing committee for the bondholders, and he was quite a large holder also of the stock of the West Point Company. It cannot be said, therefore, that there is such alienation of this property to a stranger, to one new to the transaction, as would make it necessary to go into this case, to the extent that the supreme court of Alabama went in the case of Marks *v.* Cowles, *supra*. But *the truth seems to be, as is urged, that L. Lanier who was the* principal acting in the purchase, was in all subsequent transactions the representative of buyer and seller of assignor and assignee. I am not prepared to take issue with the doctrine of Marks *vs.* Cowles, *supra*, but if it is necessary in the opinion of the court to invoke it in this case, as under the peculiar facts shown here, while restitution will involve some complications and some
435 difficulty, perhaps, in its practical enforcement, I feel it my duty, upon the repayment of the cash paid by the purchasers, to direct it. Before any order is made in the matter, however, it will be necessary probably, to hear counsel as to its terms and conditions. It may be proper to add that in the opinion of the appellate court directing a reversal of this case, this language is used: "It is obvious that there was such substantial error in that finding as must, on appeal, vitiate all subsequent proceedings." The record in the appellate court showed the sale and the confirmation of the sale and the language used clearly indicates that the proceedings up to the time of the purchase by Lanier and others as representatives of the bondholders, in the opinion of that court was annulled by its judgment of reversal.

This September 14th, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office this 14th day of September, 1894.

O. C. FULLER, *Clerk*,
By GEO. S. BARNARD,
Deputy Clerk.

Motion of Huguley Mfg. Co. and Order Overruling Same.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee, etc., *vs.* HUGULEY MFG. COMPANY ET AL. } Motion for Restitution by the Huguley Manufacturing Company *et al.*

Now comes the said Huguley Mfg. Co., and moves the court that it be referred to the standing master in chancery of this court, or

such other person as the court may appoint to act as master, to hear evidence and report to this court the reasonable value of the use and occupation of the property involved in this suit, and of which the bondholders were put in possession under the sale made pursuant to the former decree of this court, which was subsequently reversed on the appeal of the Huguley Manufacturing Co., *et al.*

436 Said petitioner further moves the court to direct said master to take and state said account concurrently with the taking and stating of the account of the mortgage debt and the amount of the bonds upon which the interest has been unpaid as heretofore directed by an order of reference of this cause, made and entered on this day; and that said master be required to report upon all of said matters concurrently at such time as the court may direct. And petitioners pray that an order for said reference is prayed to be made without requiring, as a condition precedent, that they pay into this court, the sum of money heretofore paid into this court on the purchase of the property as aforesaid.

Petitioners further move the court to vacate and set aside so much of the decree relating to the restitution this day made in the above entitled cause, as requires these petitioners to pay into this court, as a condition precedent to restitution, the sum heretofore paid into this court by L. Lanier, A. T. Dallas and J. T. Kirby upon their purchase of the property under the decree of sale heretofore made in this cause.

These motions are made on the following grounds:

1. That this court can not legally require the payment of said sum as a condition precedent to restitution or the taking of the accounts of rents and profits.

2. That a part of said sum was paid in to be applied to the expenses of the sale under said decree, and that said decree having been reversed, this court can not legally require these petitioners as a condition precedent to restitution or to said accounting to pay the costs incurred in the matter of said sale.

3. Because a part of said money was applied by the complainants to the purchase of bonds held by D. Jannopoulo and Mrs. Sallie Huguley, and this court cannot legally require petitioners to refund said sum as a condition precedent to restitution, and said petitioners submit on the hearing of these motions the former decree of

437 this court ordering said sum to be paid into this court, (the same being the final decree heretofore rendered and which was reversed) and the petition of said Lanier, Dallas and others as a committee of bondholders setting forth their purchase and praying confirmation, and the report of A. E. Buck heretofore filed in this cause showing the disposition made of said sum of money by him as commissioner.

Said complainants also move the court to set aside and vacate so much of the decretal order made this day in this cause as requires the payment in court or reimbursement of said sum of money hereinbefore referred to as a condition precedent to the taking by the master of an account of the rents and profits for the value of the use

and occupation of the property involved in this litigation while in the hands of the purchasing bondholders, upon the same grounds hereinbefore noted, and they submit on this motion the same evidence as above set forth in this motion. And petition also submits on the sworn petition for restitution and the answer thereto.

J. M. CHILTON,
BIGBY, REED, BERRY & FOOT,
ALLEN FORTE,
Solicitors for Petitioners.

Order Denying Petition.

The above and foregoing petition is denied on each and all of the grounds as set forth therein.
This September 22d, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, *Clerk.*

438 *Order on Motion for Restitution, etc.*

J. J. ROBINSON, Trustee,
versus
ALABAMA & GEORGIA MFG. CO. ET AL.
} Petition for Restitution of Property by Defendants in Circuit Court U. S., N. Dis. Ga.

The matter of framing the proper order of decree under the opinion of this court of file in the matter of restitution, came on to be heard by the court and after argument of counsel thereon on the various aspects of said matter as suggested by counsel, and on consideration thereof it is considered ordered and decreed.

1. That the motion of defendants that they have restitution of the property described in the petition and which was sold under the decree of this court as shown by the record, be granted on condition they deposit with the registry of this court within thirty days from this date the sum of ten thousand dollars—the same being the sum paid into the court by L. Lanier, A. T. Dallas and J. T. Kirby the purchasers of said property.

2. The motion of said defendants The Huguley Mfg. Co. *et al.* to refer the question of mesne profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition to restitution in order that the one may be offset against the other in court shall appear that mesne profits have accrued is denied.

3. The motion of counsel for complainants, that the condition of restitution should be that defendants asking restitution should give bond and security that the property on a resale should bring as much as it sold for at the first sale is also denied.

Sept. 22d, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, *Clerk.*

439 *Order Reference to Julius L. Brown, Esq., Standing Master in Chancery.*

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } Bill for Foreclosure.

It is ordered by the court that in accordance with the judgment of the court of appeals, reversing the decree of this court in said cause, that said cause be referred to the standing master in chancery of this court, Julius L. Brown, Esq., to report to this court forthwith, the amount of principal and interest due on the bonds secured by the trust deed in said cause sought to be foreclosed, and which of said bonds were due under the judgment of the court of appeals and the holder of such bonds. The evidence having been taken in the cause, and is of file in this court, the same is referred to said master, with the right to hear any other and further evidence on that question, necessary to determine the same, if the evidence already taken is not sufficient.

This 22nd day of September, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 22nd day of September, 1894.

O. C. FULLER, *Clerk,*
By GEO. S. BARNARD,
Deputy Clerk.

Order Referring Question as to Rents, Profits, to Julius L. Brown, Esq., Standing Master.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } Bill of Foreclosure.

It is hereby ordered that the petition of file in the above stated case, claiming rents, issues and profits, be referred to Julius
440 L. Brown, Esq., standing master in chancery, and that he hear evidence and report upon the same.

This order is not to take effect until petitioners comply with the judgment of the court by reimbursing the purchasers of said property in such amount as the courts may by its order hereafter determine.

The granting of this order is not a waiver by said petitioners of their right to contest in every way the requirement of the court that they make the reimbursement mentioned above.

This 22nd September, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 22nd day of Sept., 1894.

O. C. FULLER, *Clerk*,
By GEO. S. BARNARD,
Deputy Clerk.

Order Revoking Order Referring Matters of Rents, etc., to Julius L. Brown, Standing Master.

The following order passed this day to-wit:

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALA. & GA. MFG. CO. ET AL. } In Equity. Bill for Foreclosure, &c.

It is hereby ordered that the petition of file in the above stated case, claiming rents, issues and profits, be referred to Julius L. Brown, Esq., standing master in chancery, and that he hear evidence and report upon the same.

This order is not to take effect until petitioners comply with the judgment of the court by reimbursing the purchasers of said property in such amount as the court may, by its order hereafter determine.

The granting of this order is not a waiver by said petitioners of their right to contest in every way the requirement of the
441 court that they make the reimbursement mentioned above.

This 22nd September, 1894.

WM. T. NEWMAN,
U. S. Judge.

Is hereby revoked and set aside, the subject matter being covered by other orders.

This September 22d, 1894.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, *Clerk.*

Motion to Amend Order of Reference.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MFG. CO. ET AL. } In Equity.

The above stated cause having been referred to Julius L. Brown, Esq., standing master in chancery, to take an account, etc., under order of this court, and it being represented that said order of reference is indefinite as to what matters are referred to said master, the plaintiff now moves to amend the order of reference so that the master shall pass on and report to the court, the following questions:

1. How many of the holders of the bonds of the Alabama & Georgia Mfg. Co., and on what bonds was the interest paid and accepted after default before the filing of the bill?

2. How many and who are the owners of the bonds which on interest remain unpaid after default and before the filing of the bill?

3. The master will report the amount of the principal and interest remaining unpaid on each class of said bonds, and on each bond up to the date of making and filing his report. He will also report the names of the holders of said bonds, as well as the amount of the principal and interest remaining unpaid on the same.

442 Plaintiff prays that rule *nisi* issue requiring defendants to show cause on Saturday the 20th instant at 10 o'clock a. m. why said order should not be amended as herein set forth.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, *Sols. for Plaintiffs.*

Order.

It is ordered that defendants show cause before me at 10 o'clock a. m., on Saturday the 20th instant, why the order of reference mentioned in the foregoing motion should not be amended as therein prayed for. Let defendants on their counsel be served.

This 18th October, 1894.

WM. T. NEWMAN,
United States Judge.

Filing.—Filed in office Oct., 1894.

O. C. FULLER, *Clerk.*

Service.

I hereby acknowledge service of the within order, receiving copy of the same.

This October 19th, 1894.

JOHN C. REED,
Solicitor for Defendants.

Answer to Rule Nisi.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO.
} Motion to Amend Order of Reference.

Defendants in answer to the rule *nisi* say: The order of reference is correct as it now stands.

Should however the court decide that said order of reference is uncertain in any respects, it ought to be corrected so as to conform to the opinion of the court of appeals; and especially that the master shall further report the fact, nature and extent of any default constituting a breach of the condition of the mortgage which said bill is filed to foreclose; and also that he shall take the account prayed for in the bill.

443 Defendants pray that said order, if modified at all, be modified according to the suggestions made in this answer.

JOHN M. CHILTON.
ALLEN FORT.
JOHN C. REED.

Filing.—Filed in clerk's office Oct. 20th, 1894.

O. C. FULLER, *Clerk.*

Order Amending Order of Reference.

In the Circuit Court U. S., Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GEO. MFG. CO. ET AL. } In Equity. Motion to Amend — of Reference to Master.

On hearing and considering the above stated motion it is ordered that said original order of reference be amended so that Julius L. Brown, Esq., as master, shall pass on and report to this court on the following questions:

1. On how many of the bonds of the Alabama & Georgia Mfg. Company was interest paid and accepted by the holders thereof after default, before the filing of the bill and who at the time of taking the account are the holders thereof.

2. On how many bonds was the interest unpaid after default and before the filing of the bill and who are the holders thereof at the time of taking the account.

3. The said master will report the principal and interest remaining unpaid at the time he is directed to take the account of both classes of said bonds, with the names of the holders, the amount of principal and interest to be stated separately.

4. The evidence already taken will be used by said master so far as the same is pertinent on the question of payments of principal and interest remaining unpaid and as to the question of ownership of said bonds. If such evidence is not sufficient when taken in connection with the record of the cause (which is hereby referred to said master) then he will hear any additional evidence which may be pertinent in the ascertainment of the facts referred to him.

444 5. The prayer of the defendants submitted in their answers to the rule *nisi* said answer being filed this day is denied.

This October 20, 1894. In open court.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office Oct. 20, 1894.

O. C. FULLER, *Clerk.*

Report of Julius L. Brown, Master in Chancery.

Office of master in chancery, U. S. circuit court, N. D. Ga.

ATLANTA, GA., *October 2d*, 1894.

In the U. S. Circuit Court, N. Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } No. —. In Equity.

In pursuance of the authority and directions contained in an order of reference made in the above stated cause on the 22nd day of September, 1894, concerning the matters therein stated, I shall consider the matters referred to me at my office, in the city of Atlanta, Ga., on the 4th day of October, 1894, at the hour of 10:30 o'clock a. m., and I shall continue said consideration from day to day so long as it may be necessary. All parties concerned are hereby notified to be present. Hereof fail not at your peril.

JULIUS L. BROWN,
Master in Chancery U. S. Circuit Court,
Northern District Ga.

Adjourned until Monday, October 8, at 11 a. m.
Oct. 8, '94, adjourned until Oct. 15, '94.
Oct. 16, '94, adjourned until Oct. 22, '94.
Oct. 22, '94, adjourned until Oct. 23, '94.
November 14, exceptions filed to draft of report.
November 15, '94, exceptions overruled.

445 *Service.*

Due and legal service of notice acknowledged. Copy hereof, and all other service waived. This 2nd, day of Oct., 1894.

JOHN C. REED.
B. F. ABBOTT.

U. S. Cir. Court, N. Dis. of Ga., Oct. Term, 1892.

J. J. ROBINSON, Trustee,
vs.
THE ALA. & GA. MFG. CO. ET AL. } No. 360. In Equity.

By virtue of the authority and directions contained in the order of reference made in the above stated cause on the 22nd day of September, 1894, and in pursuance of the notice given the master proceeded on the 4th day of October, 1894, to consider said matters.

Their appeared for the complainants, B. F. Abbott and for the respondents Jno. C. Reed as solicitors.

The master stated that he desired to expedite the cause as much as possible and called this meeting more to confer with the counsel as to the time that would be suitable for them to proceed with the cause rather than to go to work now.

After considering the matter, reading the opinion and considering the matters referred the master stated that he would here whatever evidence there might be submitted on either side to show whether the interest was paid on the bonds and whether the bonds so showed the interest or not by having the coupons annexed to them or by having them detached.

Upon suggestion of solicitors the master adjourned the hearing until Monday, October the 8th.

Upon said day upon motion of solicitors said hearing was adjourned until October 15th. Afterwards the master adjourned said hearing until October 16th, 1894.

446 U. S. Circuit Court, Northern District of Georgia, October Term, 1892.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } No. 360.

Hon. Julius L. Brown, master in chancery presiding.

Appearances for complainant: Col. B. F. Brewster and Col. B. F. Abbott.

Appearances for defendants: Col. Allen Fort and Col. Jno. C. Reed.

Stenographer: G. T. Osborn, Esq.

Hearing, Tuesday, October 16th, 1894.

After reading aloud the order of reference the court said: It seems to me that the sole question for me to decide under this order, is to look after the interest on the bonds what had been and what had not been paid.

Col. REED: We wish to show by evidence that the Huguley Manufacturing Company had money in the hands of W. H. Huguley & Company the office of the company, to pay the interest on these bonds; and that they were the agents of the Alabama & Georgia Mfg. Co., and that if demand had been made there, the interest would have been paid. We want to offer evidence to show that that was the office of the company and that we had funds there to pay this interest and if they had been presented there, the proper place, that they would have been paid as we had more than enough to pay them.

In a word we want to offer evidence to show that at the place and at the time for payment of the interest, we had funds there to pay it, and if any demand had been made we would have paid the interest, but that no demand was made at the place.

After considerable discussion on this point pro and con, the court ruled:—

I understand you want to offer testimony that the place where this interest was payable was the office of Huguley & Co., that
447 it was the office of the Alabama & Georgia Mfg. Co., and that you had funds there and that it was there for the purpose of paying the interest and that there was no demand made for the same.

Gentlemen I will hear evidence as to where the office of the company was and also as to the money being there for the purposes named.

Col. Reed then stated that they did not have the witnesses present but would have them at the next sitting of the court. This was agreed to.

Col. FORT: We would like to have a ruling on another point of evidence as it is very expensive to bring the witnesses here. We want to show that the Galeton cotton mills are bondholders and beneficiaries of this suit and that they have taken wrongful possession of this property since the suit was begun, and that they have enjoyed large rents and profits, to-wit $75,000.

COURT: Where was the title at the time of this suit?

FORT: In these same people—Laniers and their associates. We wish also to show that they have removed machinery and committed wastes to the amount of $25,000. We wish to show this by expert witnesses that we will produce before the court.

After further discussion the court ruled. I don't understand that is referred to me under this order of reference.

FORT: We want to save the point. Exception noted.

COURT: What I understand you to tender evidence on is that the men in possession were beneficiaries at the time and that they have gotten more out of it than the interest and therefore you don't owe any?

—. Yes, sir.

COURT: I don't understand that I have anything to do with that.

FORT: Please note our exceptions, Mr. Stenographer.

Court adjourned on Monday, Oct. 22nd, '94, 2.30 o'clock.

Monday, October 22nd, 1894, 2.30 o'clock, court met pursuant to adjournment.

448 Present: Cols. Brewster, Abbott, Ford, Reed and G. T. Osborn, stenographer.

Col. Abbott read to the court an amended order obtained since the last sitting of the court.

The court said I stated and ruled at the last sitting that I would

hear all evidence, showing the nature of the default, and whether or not the defendant corporation, had money at the time and place of the payment as stated in the coupons in the bonds, but since the amended order this day taken has been read to me I will reverse said ruling and will not hear evidence tendered upon said subject, as I do not feel that under the terms of this order I have the right to hear the same."

To this ruling the defendants through their solicitors Messrs. Fort and Reed made an exception and asked that the same be noted.

The court then asked the solicitors to please specify any parts of the evidence in the record that they would like to have him examine especially as bearing upon the points, as they were more familiar with the case.

Acting on this suggestion Col. Abbot said, I wish to call your honor's attention to the testimony of W. C. and L. Lanier pages 54 and 69 in the printed volume. D. Jannopoulo, 107, 133–139. Answer Huguley Manufacturing Co., page 17. The amended answer page 27. Buck's report, which is of file, also the bonds which are in the clerk's office except $6,000.

COURT: Can't you gentlemen agree about the facts as to those bonds?

ABBOTT: Those bonds were of file in the clerk's office. Col. Hammond represents Mrs. Sallie Huguley and she owned $6,000 of bonds and as her attorney of record he claimed the right to withdraw those bonds to collect something that was due on them. He withdrew them and turned them over to his client. His fee was paid
449 and he was discharged from the case. She has since married and lives in Gadsden, Ala. The interest on those bonds were paid after the default. Buck's report shows about those bonds.

BREWSTER: The record fails to show who were the owners of part of the bonds. I don't think the record discloses it at all and we want to offer evidence on that line.

COURT: The original order asked me to state to whom they belong.

It was stated that the bonds were not registered bonds.

COURT: Is there anything you gentlemen wish to offer in addition?

Col. REED: We don't think of any evidence that we want to offer except what we have already offered and what is in the record.

L. LANIER sworn for complainants.

Direct examination by Col. BREWSTER:

Q. You are familiar with that report (handing witness Buck's report)?

A. Yes, sir, I am.

Q. I will get you to state to whom the bonds belong that are put down to L. Lanier.

—. The first here, $15,000 marked L. Lanier are from Mrs. L. Lanier guardian for Miss Susie Huguley.

The second $8,000, L. Lanier represent Mrs. L. Yancey as agent.

Q. They were hers then?

A. They were hers.

Q. Are those the number of bonds Mrs. Lanier owned as guardian that you have called?

A. Yes, sir, we got these from the bonds.

Q. It is the proper number?

A. Yes, sir.

Q. Are the proper numbers mentioned in the case of Mrs. Lanier as agent of Miss Yancey?

A. Same way. They are the proper numbers.

450 Q. You can go along with the rest stating if they are the proper ones which the record shows there?

A. Well, I would say that A. T. Dallas, $5,000 are numbered correctly. The $15,000 Mrs. Lanier guardian for Susie Huguley are numbered as follows, 37 to 66 inclusive. The Miss L. Yancy bonds are numbered 21 to 36 inclusive. The A. T. Dallas bonds $5,000, 89 to 98 inclusive. E. J. Nolan bonds, $3,000, 105 to 110 inclusive. These are $500 bonds.

COURT: All the bonds are $500 bonds?

A. Yes, sir. Mrs. Hackney $2,000 and L. J. Blackburn $1,000 of bonds called together, because down here that way, from 11 to 14 inclusive and 7 and 8. It stands here 7 and 8. I don't like to swear by this report as it is a copy, but there are two bonds. L. D. Hutchison $3,000 of bonds, 99 to 104 inclusive. Miss Julia A. Walker $2,000, numbers 5, 6, 15 and 16.

Q. She is not now the owner of those bonds?

A. No, sir; she died and they were divided among the heirs of that estate.

Q. Do you know who the heirs are?

A. They are Hackney, Blackburn, A. D. Moore, Lou E. Kirby and Mrs. C. Hardy.

Mrs. A. D. Moore, $2,000, from 1 to 4 inclusive; Mrs. Lou E. Kirby, $2,000, 17 to 20 inclusive; G. A. Huguley, $1,000, 9 to 10 inclusive; Atlanta national bank, $2,000, 125 to 128 inclusive; G. A. Huguley, $1,500, 119, 120, 121. J. F. Hooper, $1,500, 122 to 124 inclusive. L. Lanier, $1,500, 81 to 83 inclusive; L. Lanier, $1,500, 77, 87, 88.

Q. Were these yours individually?

A. Yes, sir. Lula A. Elliott, $1,500, 84, 85 and 86; J. E. Elliott, $2,000, 76, 79, 78, 80; Mrs. S. Elliott, $500, 75; J. H. Huguley, $2,000, 111 and 114; Mrs. S. H. Huguley, now Mrs. S. H. Kyle, of Gadsden, Ala., $6,000; 67 to 74 inclusive and 115 to 118.

451 Now I don't know who owns $1,000, standing in the name of L. Lanier. These were sent down to our office from St. Louis for collection.

Q. Who collected the money on the distribution?

A. It was paid to the trust company here. It belonged to some lady in St. Louis. It was a $1,000, bonds numbered 129, 130, known as the Jannopoulo bonds. Now there were four coupons of $20 each belonging to W. C. & L. Lanier.

Q. Can you give bonds on which interest was not paid in July '90 and that were not paid by the first of July, '91?

A. If you will give me the list I can.

Q. Just the numbers or perhaps the owners that would be easier.

A. I would say Lanier guardian, $15,000, numbers heretofore given; Mrs. L. Yancy, $8,000, numbers given; A. T. Dallas, $5,000, numbers given; E. J. Nolan, $3,000, same numbers as given; Hackney & Blackburn, $3,000, numbers as given; L. D. Hutchison, $3,000, numbers given; Julia A. Walker, and her heirs same numbers given, $2,000; Mrs. A. D. Moore, $2,000, same numbers as given; Mrs. Lula E. Kirby, $2,000, same numbers given; G. A. Huguley, $1,000, with same numbers given; Atlanta national bank, $2,000, same numbers given. These are the bonds that were in default.

Q. Can you give those not in default?

A. I expect, before the filing of the bill. G. A. Huguley, $1,500 with numbers given; J. F. Hooper, $1,500, with the numbers given; L. Lanier, $1,500, numbers given; L. Lanier, $1,500, numbers given. Those two of $1,500 each belonged to another person at the time of this suit.

Q. Who was the person?

A. Belonged to W. D. Elliott and another Mr. Elliott whose name I have forgotten.

Q. Who do they belong to now?

A. They belong to L. Lanier, Lula A. Elliott, $1,500, with
452 numbers given; J. E. Elliott, $2,000, with numbers given; Mrs. S. Elliott, $500, with numbers given; Mrs. S. H. Huguley, (now Kyle) $6,000, with numbers given; two bonds, $1,000 with the numbers given belonging to some lady in St. Louis, whose name I don't know. Those are the bonds known as the Jannopoulo bonds. I know that is $46,000 of matured bonds that were in default and four coupons (detached) of $80.00.

Q. To which did they belong?

A. I think they belong to the bonds of G. A. Huguley, Nos. 9 and 10. I think those were the bonds, I am not certain.

Q. The bonds will show that they were detached?

A. Yes, sir.

Q. Are they pinned back to the bonds?

A. I left them pinned loose, when this schedule was made up. This shows $46,000 of bonds in default.

Q. How came them cut off?

A. They were bonds belonging to the heirs of Mrs. Julia Walker and sold to W. C. &. L. Lanier.

Q. Are there any of the other bonds that show detached coupons?

A. There may be but there are pinned to the bonds.

Q. I will ask you about the Atlanta national bank's bonds? Will the July coupons appear on their bonds?

A. In the case of the Atlanta National Bank bonds, those people in some way took cash on July '90. I don't think we pinned those to the bonds.

Q. You don't know whether that was before or after the filing of the bill?

A. No, sir. I don't know.

FORT: We want to refer to the testimony of Jannopoulo and Romare that they had in their hands the coupons of July were not in default.

COURT: Examine the witness now.

Col. REED: You spoke of certain bonds belonging to Mrs.
453 Walker and you say she died and that these bonds have been distributed among certain of her heirs?

A. Yes, sir.

Q. How do you know that?

A. I know she died.

Q. Do you know anything about the estate or have anything to do with the management of the estate?

A. No, Judge Denson was administrator of the estate.

Q. You have only been informed of the distribution?

A. Yes, sir; I know that Mrs. Hardy had $500 of the bonds.

Q. You know that each of the other heirs got a part of the bonds?

A. I think a $1,000 of it was G. A. Huguley, which was in default.

Q. How do you know of your own knowledge that the heirs got these bonds?

A. Mrs. G. A. Huguley two bonds. Mrs. Hardy got one of them and I think that the other $500 was divided among the heirs but don't know about that.

Q. You have used the expression two or three times that certain bonds were in default, what do you mean by that?

A. Interest not paid.

Q. How do you know that as to these bonds?

A. Because we had the bonds before us at the time with the coupons on them.

Q. You mean all the $46,000?

A. $46,000 counting the Atlanta National Bank bonds.

Q. You didn't have them?

A. At this accounting we had them.

Q. You mean you were present at the Buck examination?

A. Yes, sir.

Q. You mean you are testifying about what you saw then?

A. Yes, sir.

454 Q. Do you know whether or not any interest has been paid on any of the bonds of your own knowledge up to the time of this order?

A. I know that they had not been paid on any of these I have testified about.

Q. How do you know that?

A. There were that many of them in my possession.

Q. You had all these in your possession?

A. All except the Atlanta national bank's. These were placed in the hands of Mr. Buck at time of the settlement.

Q. Now at the time of the maturity of these bonds you had all of them in your possession, with the exception of the Atlanta National bonds.

A. No, sir, I did not say that. I did not say that I had all of them at the time but subsequently I did.

Q. Let's go slow. At the maturity of the coupons where were the bonds?

A. A great many of them were in our vaults at home.

Q. All of them?

A. No, not all of the $46,000.

Q. How many not, $1,000?

A. Perhaps so.

Q. At the maturity of the coupons you did not have all of them?

A. No, sir; not on the first day of July, '90, afterwards.

Q. After that they were all put in your possession. How do you know that the interest had not been paid?

A. Because the coupons were there.

Q. The coupons still on them?

A. Yes, sir.

Q. You mean that the coupons were on all the bonds after you got them in your possession?

A. Yes, sir.

Q. What were you doing with the bonds, how did they get in your possession?

455 A. My wife as guardian kept her bonds there. W. C. and L. Lanier, Yancy, Hutchison, and Nolan. Not certain about Hutchison.

Q. You are not certain about Hutchison?

A. No, sir.

Q. Or about Nolan?

A. I am.

Q. Didn't the Atlanta national bank have funds in its hands on the first day of July to pay this interest?

Objected to.

After argument pro and con, objection withdrawn.

Q. I want to know if the Atlanta national bank didn't have funds in its hands to pay themselves this interest on their bonds the first of July?

A. I don't know. The president told me he didn't have.

It was objected that all this kind of evidence was in the record.

It was agreed that it go out. That is about the Atlanta national bank.

COURT: Any other testimony.

BREWSTER: That is all that I know that is lacking to complete the record.

The COURT: I will let in evidence to show that the bank had money there to pay its own debt.

The master adjourned the hearing until October the 23rd.

Col. B. F. Abbott, one of the solicitors for complainants, stated that it might be entered upon the record that the Atlanta national bank, after default, received interest on its coupons, No. 13.

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In U. S. Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GEO. MFG. CO. ET AL. } No. 360. In Equity.

The defendants in said case having been furnished by
456 Julius L. Brown, Esq., master in chancery, with a draft of his report in said case before said report is filed, now file before said master the following exceptions to his report:

1. As stated in said report the solicitors for respondents tendered before said master evidence to show that the Huguley Manufacturing Company had money in the hands of W. H. Huguley & Co. at the office of the company to pay the interest on the bonds, that said W. H. Huguley & Co. were the agents of the Ala. & Ga. Mfg. Co., and if demand had been made there, the interest would have been paid; and further evidence to show that that was the office of the company, that there were funds at that place to pay interest, and if the bonds had been presented there, which was the proper place, they would have been paid, as said W. H. Huguley & Co. had in hand more than funds enough to pay them, and that no demand was made at the place; and the master ruled as is stated in said report that he would hear evidence as to where the office of the company was, and also as to the money being there for the purpose named; and afterwards, as appears in said report, said master reversed the ruling hereinbefore set out, and decided he would not hear the evidence tendered upon the subject:

To this ruling of the master that he would not hear the evidence aforesaid, the defendant excepts, contending that said master erred in making the same, and that he ought to have admitted and considered said evidence, as said evidence was legal and relevant, and authorized by the mandate and judgment of the court of appeals in said case, and by the pleadings and the orders of reference.

2. As is stated in said report, the respondent's solicitors tendered evidence before said master to show that the Galeton cotton mills are bondholders and beneficiaries of this suit, that they have taken

wrongful possession of this property in controversy, since the suit was commenced, and that they have enjoyed large rents and profits, to-wit, $75,000; that they have removed machinery and committed waste to the amount of $25,000, the same to be shown by expert witnesses; and the master ruled that he would not hear the evidence:

457

To this last mentioned ruling, the defendants except, and say that the master erred in making the same, as said evidence was legal, relevant, and authorized by the orders of reference, and the mandate and opinion of the court of appeals and the pleadings in said case, and for the further reason that the matter to which said evidence was offered belonged to the accounting which the master was directed to take.

JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Solicitors for Defendants.

The above and foregoing exceptions to the draft of my report are hereby overruled, and I hereby settle the form of said report and make the same to the court.

JULIUS M. BROWN,
Master in Chancery.

This November 15, 1894.

Report of Julius L. Brown, Master in Chancery.

U. S. Cir. Court, N. Dis. of Ga.

J. J. ROBINSON, Trustee,
vs.
THE ALA. & GA. MFG. CO. ET AL. } No. 360. In Equity.

In obedience to the order of reference made in the above stated cause, passed on the 22nd day of September, 1894, directing me "to report to this court forthwith, the amount of principal and interest due on the bonds secured by the trust deed in said cause, sought to be foreclosed, and which of said bonds were due under the judgment of the court of appeals, and the holder of such bonds."

I consulted the convenience of the solicitor- for the parties, and set the hearing for the 4th day of October, 1894, and from said date to suit their convenience, have continued the same from day to day until this date.

458

Upon the hearing on October 8th, 1894, I ruled that I would hear any evidence submitted that would show whether interest was paid or not, regardless of whether the bond so showed or not.

Upon the hearing had October 16th, 1894, solicitor for complainant waiving the production of the witnesses to save expense of bring-

ing them needlessly, should they not be needed, and consenting that the points be decided as though the witnesses were present.

Respondents' solicitors tendered evidence as follows: "We wish to show by evidence that the Huguley Manufacturing Company had money in the hands of W. H. Huguley & Co., the office of the company to pay the interest on these bonds, and that they were the agents of the Alabama & Georgia Manufacturing Company, and that if demand had been made there, the interest would have been paid. We want to offer evidence to show that was the office of the company, and that we had bonds there to pay this interest, and if they had been presented there, the proper place, that they would have been paid, as we had more than enough to pay them. In a word, we want to offer evidence to show that at the place and the time for the payment of the interest, we had bonds there to pay it, and if any demand had been made, we would have paid the interest, but that no demand was made at the place.

Construing the order of reference to me to mean, that I was to consider the whole opinion of the court of appeals in said case, I based my ruling upon the following words in that decision, 56 Fed. Rep., 693.

"What is indispensable in a decree of foreclosure and sale such as asked in this case, and which the decree appealed from purporting to grant, 'is that there should be declared the fact nature and extent of the default which constituted the breach of the conditions of the mortgage and which justified the complainant in bring-
459 ing his bill to foreclose it, and the amount due on account thereof etc., etc., and I ruled that I would hear evidence as to where the office of the company was, and also as to the money being there for the purpose named. To which ruling complainant's solicitor excepted.'"

Respondent's solicitor then tendered evidence as follows:

"We want to show that the Galeton cotton mills are bondholders and beneficiaries of this suit and that they have taken wrongful possession of this property since the suit was begun, and that they have enjoyed large rents and profits to-wit, $75,000; we wish also to show that they have removed machinery and committed wastes to the amount of $25,000; we wish to show this by expert witnesses." I ruled that I would not hear the evidence. It was admitted that the title to the bonds at the time of this suit was "in these same people, Laniers and their associates."

I based my ruling upon the decisions.

Upon the matter of title and I based my ruling upon the matter of waste, rents and profit, upon the order of reference to me. No such questions were referred to me as I understand the order.

To these rulings respondent's solicitor excepted.

I continued the hearing until October 22nd, 1894, at which time the amended order of reference was handed to me, together with the motion for the same, the response to the rule therefor, and thereupon, I made the following ruling:

"I stated and ruled at the last sitting that I would hear all evidence, showing the nature of the default and whether or not the defendant corporation had money at the time and place of payment as stated in the coupons in the bonds, but since the amended order this day taken has been read to me, I will reverse said ruling and will not hear evidence tendered upon said subject, as I do not feel that under the terms of this order I have the right to hear the same. To which ruling solicitors for respondents excepted.

I then proceeded to hear all the evidence tendered, as
460 shown in my minutes hereto annexed, and after considering the same, together with the evidence heretofore taken, together with the record, I find the report as follows:

First. I find and report that interest was paid and accepted after default, and before the filing of the bill upon bonds numbers 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118, and that said bonds are the property of Mrs. S. H. Kyle, formerly Mrs. S. H. Huguley; and upon bond number 75 the property of Mrs. S. E. Elliott and upon bonds numbers 76, 78, 79 and 80 the property of J. E. Elliott and upon bonds numbers 77, 81, 82, 83, 87 and 88 the property of L. Lanier and upon bonds numbers 84, 85 and 86 the property of Loula E. Elliott and upon bonds numbers 111, 112, 113 and 114 the property of F. H. Huguley, and upon bonds numbers 119, 120 and 121 the property of G. A. Huguley, and upon bonds numbers 122, 123 and 124 the property of F. H. Hooper and upon bonds numbers 125, 126, 127 and 128 the property of the Atlanta national bank, making a total of bonds 40, now owned as follows:

Mrs. S. H. Kyle, formerly Huguley	12
Mrs. S. E. Elliott	1
J. E. Elliott	4
L. Lanier	6
Loula A. Elliott	3
F. H. Huguley	4
G. A. Huguley	3
J. F. Hooper	3
Atlanta national bank	4

Second. I further find and report that the interest was unpaid after default and before the filing of the bill upon bonds numbers 1, 2, 3, and 4, the property of Mrs. A. D. Moore and upon bonds numbers 5, 6, 15 and 16 the property of the heirs of Julia A. Walker to-wit: Lavina Hackney, Blackburn, Lou E. Kirby and Mrs. C. Hardy, and upon bonds 7 and 8 the property of Joel Walker,
461 and upon bonds 9 and 10 the property of G. A. Huguley and upon bonds 11, 12, 13, 14, the property of Lavina Hackney and upon bonds 17, 18, 19 and 20 the property of Mrs. Lou E. Kirby and upon bonds 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 the property of Mrs. L. Yancey and upon bonds 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59,

60, 61, 62, 63, 64, 65 and 66, the property of Mrs. L. Lanier as guardian of Susie Huguley. And upon bonds numbered 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, the property of A. T. Dallas, and upon bonds numbers 99, 100, 101, 102, 103 and 104 the property of L. D. Hutchinson, and upon bonds 105, 106, 107, 108, 109 and 110, the property of E. T. Nolan, and upon bonds 129 and 130 called the Demetrious Jannopoulo bonds, which are the property of J. W. Burdett as trustee, making a total number of bonds owned as follows:

Mrs. A. D. Moore	4
Heirs of Julia A. Walker	4
Joel Walker	2
G. A. Huguley	2
Lavina Hackney	4
Mrs. Lou E. Kirby	4
Mrs. L. Yancey	16
Mrs. L. Lanier as guardian for Susie Huguley	30
A. T. Dallas	10
L. D. Hutchinson	6
E. Nolan	6
J. W. Burdett as trustee (Jannopoulo)	2

Third. I have made my calculations to November 1st, 1894, up to that date I find and report that there was due Mrs. A. D. Moore, $2,000.—for principal on her bonds and $80—for coupon No. 13, $80—for coupon No. 14, $80—for coupon No. 15, $80—for coupon No. 16, $80—for coupon No. 17, $80—for coupon No. 18, $80—for coupon No. 19, and $80—for coupon No. 20, making a total of
462 $640.—for principal of coupons. I further find interest on coupon No. 13 $24.28, interest on coupon No. 14, $21.42, interest on coupon No. 15, $18.68, interest on coupon No. 16, $15.88, interest on coupon No. 17, $13.08, interest on coupon No. 18, $10.28, interest on coupon No. 19, $17.48, interest on coupon No. 20, $4.68, making a total interest due on her coupons of $115.78.

I find that there was due her Nov. 1st, 1894.

For principal of bonds	$2,000.00
For coupons	640.00
For interest on same	115.78
Making a total due her	$2,755.78

I find and report the same amount due to the heirs of Mrs. Julia A. Walker which I have found and reported to Mrs. A. D. Moore.

I find and report the same amount due Mrs. Lavina A. Hackney, which I have found for Mrs. A. D. Moore.

I find and report the same amount due Mrs. Lou E. Kirby which I have found for Mrs. A. D. Moore.

I find and report that there was due Joel Walker $1,000 for principal of his bonds, and $40 each for coupons, 13, 14, 15, 16, 17, 18,

19 and 20 making a total of $320 due him for said coupons, and $12.14 interest on coupon No. 13, $10.74, interest on coupon No. 14, $9.34, interest on coupon No. 15, $7.94, interest on coupon No. 16, $6.54, interest on coupon No. 17, $5.14, interest on coupon No. 18, $3.74, interest on coupon No. 19, and $2.34 for interest on coupon No. 20, making a total of interest on his coupons of $57.92. Making a total due him

For bonds	$1,000.00
For coupons	320.00
For interest on coupons	57.89
Making a total of	$1,377.89

463 I further find and report the same amount due J. W. Burdet as trustee which I have found due Joel Walker, less $80 for coupons 13 and 14, and less $12.14 for interest on coupon 13 and $10.74 interest on coupon 14. Said coupon and interest I find and report belong to L. Lanier.

I further find and report that there was due Mrs. L. Yancey upon her bonds as principal $8,000.00, upon her coupons 13, 14, 15, 16, 17, 18, 19 and 20 $2,560.00 and for interest upon her coupons.

For coupon No. 13	$97 12
" " " 14	85 68
" " " 15	74 72
" " " 16	63 52
" " " 17	52 32
" " " 18	41 12
" " " 19	29 92
" " " 20	18 72
Making a total of interest on her coupons of	$463 12
Making a total due for her principal of bonds	$8,000 00
For coupons past due	2,560 00
For interest on coupons	463 12
Making a total due of	$11,023 12

I further find and report that there was due A. T. Dallas for principal of his bonds $5,000, and $1,600 for coupons numbers 13, 14, 15, 16, 17, 18, 19 and 20 and

For interest upon coupon No. 13		$60 70
" " " " "	14	53 70
" " " " "	15	46 70
" " " " "	16	39 70
" " " " "	17	32 70
" " " " "	18	25 70
" " " " "	19	18 70
" " " " "	20	11 70
Making a total of interest due on coupons of		$289 60
464 Making due for principal of bonds		$5,000 00
For coupons		1,600 00
For interest on coupons		289 60
Making a total due him of		$6,889 60

I further find and report that there was due Mrs. L. Lanier as guardian for Susie Huguley for principal of her bonds, $15,000, for coupons numbers 13, 14, 15, 16, 17, 18, 19 and 20, $4,800, and

For interest on coupon No. 13		$182 10
" " " " "	14	161 10
" " " " "	15	140 10
" " " " "	16	119 10
" " " " "	17	98 10
" " " " "	18	77 10
" " " " "	19	56 10
" " " " "	20	35 10
Total interest on coupons		$868 80
Making a total of principal of bonds		$15,000 00
Of coupons		4,800 00
Of interest on coupons		868 80
Making a total due of		$20,668 80

I further find and report that there was due L. D. Hutchinson as principal on his bonds, $3,000, and for coupons, 13, 14, 15, 16, 17, 18, 19 and 20 $960.00.

And for interest on coupon No. 13		$36 42
" " " " " "	14	32 22
" " " " " "	15	28 02
" " " " " "	16	23 82
" " " " " "	17	11 02
" " " " " "	18	15 42
" " " " " "	19	11 22
" " " " " "	20	7 02
Making a total interest of		$173 76

465	For principal of bonds	$3,000.00
	For coupons	960.00
	For interest on coupons	173.76
	Making a total due him of	$4,133.76

I further find and report the same amount due E. J. Nolan which I have found due L. D. Hutchinson.

I further find and report that there is due G. A. Huguley as principal on bonds numbers 9 and 10 the sum of $1,000, and $40 each on coupons 13, 14, 15, 16, 17, 18, 19 and 20 making a total due of $320 due him for said coupons.

And for interest on coupons	No. 13	$12.14
" " " " " "	14	10.74
" " " " " "	15	9.34
" " " " " "	16	7.94
" " " " " "	17	6.54
" " " " " "	18	5.14
" " " " " "	19	3.74
" " " " " "	20	2.34
	Total interest on coupons	$57.92

	Making due him for principal on said bonds	$1,000.00
	For coupons	320.00
	For interest on same	57.92
	Making a total on said bonds of	$1,377.92

I further find and report that there is due G. A. Huguley for principal on his other bonds 119, 120, and 121 $1,50, and for his coupons numbers 17, 18, 19 and 20, $240.00, and

For interest on coupons	No. 17	$9.81
" " " " "	18	7.71
" " " " "	19	5.61
" " " " "	20	3.51
	Total interest on coupons	$26.64

466	Making due for principal on said bonds	$1,500.00
	For coupons on the same	240.00
	For interest on the same	26.64
	Making total due on these three bonds of	$1,766.64

Making total due him on all bonds $2,500.00, on all coupons $560.00 and interest on all coupons $84.56. Making a total due him of $3,144.56.

I further find and report that there was due S. E. Elliott $500 as principal and $80 for coupons 17, 18, 19 and 20 and

For interest on coupon No. 17	$3.27
" " " " " 18	2.57
" " " " " 19	1.87
" " " " " 20	1.17
Making a total of interest on coupons	$8.88
Making due her for principal	$500.00
For coupons	80.00
For interest on coupons	8.88
Total amount due her	588.88

I further find and report that there was due J. E. Elliot for principal of his bonds $2,000, and $320 for coupons 17, 18, 19 and 20 and

For interest on coupon No. 17	$13.08
" " " " " 18	10.28
" " " " " 19	7.48
" " " " " 20	4.68
Making a total interest on coupons	$35.52
Making a total due him for principal of his bonds of	$2,000.00
For coupons	320.00
For interest on coupons	35.52
Making a total due him of	$2,355.52

467 I further find and report that the same amount is due F. H. Huguley, which I have found and reported to be due said J. E. Elliott.

I further find and report that there is due Loula A. Elliott for principal of her bonds $1,500, and for coupons 17, 18, 19 and 20, $240, and

For interest on coupon No. 17	$9.81
" " " " " 18	7.71
" " " " " 19	5.61
" " " " " 20	3.51
Total interest on coupons	$26.64

Making total due her for principal of bonds	$1,500.00
For coupons	240.00
For interest on same	26.64
Making a total due her of	$1,766.64

I further find and report that there is due J. F. Hooper the same amount which I found to be due Loula A. Elliott.

I further find and report that there is due L. Lanier for principal on his bonds $3,000, and for coupons 17, 18, 19 and 20, $480, and

For interest on coupon No. 17	$19.62
" " " " " 18	15.42
" " " " " 19	11.22
" " " " " 20	7.02
Making a total due for interest	$53.28

Making due him for principal	$3,000.00
For coupons	480.00
For interest on coupons	53.28
Making a total due of	$3,533.28

468 Also due him $80 for coupons 13 and 14 on bonds 129 and 130 and $22.88 interest on same.

I further find and report that there is due the Atlanta national bank for principal of its bonds $2,000, and for coupons 14, 15, 16, 17, 18, 19 and 20 $560 and

For interest on coupon No. 14	$21.48
" " " " " 15	18.68
" " " " " 16	15.88
" " " " " 17	13.08
" " " " " 18	10.28
" " " " " 19	7.48
" " " " " 20	4.68
Making a total of interest of	$91.56

Making a total due it for principal	$2,000.00
For coupons	560.00
For interest on coupons	91.56
Making a total due of	$2,651.56

I further find and report that there is due Mrs. S. H. Kyle, formerly Huguley, the sum of $6,000, for principal of her bonds, and

that there is due her $560, for coupons—17—18—19 and 20, and due her for interest on coupons $106.56 as follows:

Interest on coupon No. 17	$39.24
" " " " 18	30.24
" " " " 19	22.44
" " " " 20	14.04
Total	$106.56
Making a total due her for her principal	$6,000.00
For coupons	560.00
And for interest on coupons	106.56
Making a total due her of	$6,666.56

469 Fourth. In obedience to the original order of reference, I find that the bill was filed in this case on the 21st day of January, 1891, and that there had accrued upon each unpaid coupon number 13 to-wit payable July 1st, 1890, the sum of seventy-eight cents for interest from July 1st, 1890, to January 21st, 1891, and that there was due for interest on said coupon No. 13 as follows:

Mrs. A. D. Moore	$3.12
Heirs of Julia A. Walker	3.12
Lavinia A. Hackney	3.12
Mrs. Lou E. Kirby	3.12
Joel Walker	1.56
G. A. Huguley	1.56
Mrs. L. Yancy	12.48
Mrs. L. Lanier as guardian for Susie Huguley	23.40
A. T. Dallas	7.80
L. D. Hutchinson	4.68
E. J. Nolan	4.68
L. Lanier	1.56

I further find and report that at the time of filing of said bill, to-wit, January 21st, 1891, there was due Mrs. A. D. Moore $2,000, for principal of her bonds, and $160, for coupons 13 and 14, and $312 for interest on coupon No. 13 and 32 cents for interest on coupon No. 14.

Making a total due her at the date of the filing of said bill.

For principal	$2,000.00
For coupons	160.00
For interest on coupon No. 13	3.12
For interest on coupon No. 14	.32
Making a total due of	$2,163.44

I further find and report that the same amount- were due the heirs of Julia A. Walker which I have found to be due Mrs. A. D. Moore.

I further find and report that the same amounts were due
470 Lavina Hackney, which I have found to be due Mrs. A. D. Moore.

I further find and report that the same amounts were due Mrs. Lou E. Kirby, which I have found to be due Mrs. A. D. Moore.

I further find and report that there was also due to Joel Walker $1,000 for principal and $80.— for coupons 13 and 14, and $1.56 interest on coupons number 13, and 16 cents interest on coupon number 14, making a total due him for principal.

For principal	$1,000.00
For coupons	80.00
Interest on coupon No. 13	1.56
Interest on coupon No. 14	.16
Making a total due him of	$1,081.72

I further find and report that there was due G. A. Huguley the same amount which I have found to be due said Joel Walker.

I further find and report that there was also due J. W. Burdett, as trustee, the same amount which I have found to be due said Joel Walker. Less $80 for coupons 13 and 14 on bonds 129 and 130 and $1.56 interest on coupons 13 and .16 interest on coupon 14 and that said $80 and interest are the property of L. Lanier.

I further find and report that there was due L. D. Hutchinson, the sum of $1,500—for principal of his bonds, and $240 for his coupon 13 and 14 and $4.68 for interest on his coupons No. 13 and 24 cents for interest on his coupon No. 14, making due him.

For principal	$1,500.00
For coupons	240.00
For interest on coupon No. 13	4.68
" " " " " 14	.24
Making a total due him of	$1,744.82

471 I further find and report that there was due E. J. Nolan, the same amount which I have found to be due said L. D. Hutchinson.

I further find and report that there was due Mrs. L. Yancey for principal of her bonds $8,000, and $640 for her coupons No. 13 and 14, and $12.48 for interest on coupon No. 13 and $1.30 for interest on coupon No. 14.

Making a total for principal	$8,000.00
For coupons	640.00
For interest on coupon No. 13	12.48
For interest on coupon No. 14	1.30
Making a total due her of	$8,653.78

I further find and report that there was due Mrs. L. Lanier as guardian for Susie Huguley for principal of her bonds $15,000 and $1,200 for coupons 13 and 14 and $23.40 interest on coupon No. 13 and $2.45 for interest on coupon No. 14, making a total

For principal	$15,000.00
For coupons	1,200.00
For interest on coupon No. 13	23.40
For interest on coupon No. 14	2.45
Making a total due her of	$16,225.85

I further find and report that there was due A. T. Dallas for principal of his bonds $5,000 and $400 for his coupons 13 and 14 and $7.80 interest on coupon No. 13 and .81 interest on coupon No. 14,

Making a total for principal	$5,000.00
For coupons	400.00
For interest on coupon No. 13	7.81
For interest on coupon No. 14	.81
Making a total due him of	$5,408.61

And that all of said parties named in this finding were entitled to have and receive said amounts at the date of the filing of said bill.

472 Fifth. I further report that the present owners of said bonds are the persons named herein as owning the same, and further that I have used the evidence heretofore taken, and also received such other evidence as was tendered to me which I deemed pertinent under the order of reference, and also examined the record.

Respectfully submitted,

JULIUS L. BROWN,
Master in Chancery.

As solicitors for the parties respectively, we hereby acknowledge receipt of copy of the above draft of master's report.

P. H. BREWSTER,
B. F. ABBOTT,
Solicitors for Complainants.

JOHN C. REED,
Solicitor for Respondents.

Filed in clerk's office 15th day of Nov., 1894.

O. C. FULLER, *Clerk.*

Opinion of Court Providing for Appointment of Commissioner and Resale of Property.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
versus
ALA. & GA. MFG. CO. ET AL. } In Equity.

In an opinion filed on a motion for restitution in this case on the 14th day of September, 1894, it was stated that it would probably be necessary to hear counsel before framing a decree. Counsel were subsequently heard and a decree entered as follows:

"The matter of framing the proper order or decree under the opinion of the court of file in the matter of restitution, came on to be heard by the court, and after argument of counsel thereon
473 on the various aspects of said matter as suggested by counsel, and on consideration thereof, it is considered, ordered and decreed:

1. That the motion of defendants that they have restitution of the property described in the petition and which was sold under the decree of this court, as shown by the record, be granted on condition that they deposit with the register of this court, within thirty days from this date, the sum of ten thousand dollars, the same being the sum paid into this court by L. Lanier, A. T. Dallas and J. T. Kirby, the purchasers of said property.

2. The motion of said defendants, The Huguley Manufacturing Company, *et al.*, to refer the question of *mense* profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition to restitution, in order that the one may be offset against the other in case it shall appear that mesne profits have accrued, is denied."

3. "The motion of counsel for complainants, that the condition of restitution should be that defendants asking restitution should give bond and security that the property on a re-sale should bring as much as it sold for at the first sale *as* is also denied."

The judgment of the court was that restitution should be made only on condition that the amount of money paid into the court by the purchasers, should be repaid to them before possession would be restored. As stated in the opinion alluded to, the effect of the judgment of reversal was not only to set aside the decree, but, as it seemed, to annul subsequent proceedings. Still, when the purchasers of the property paid into court the $10,000.00, they paid it under a decree valid and subsisting at that time, and really paid the money for the benefit of the Huguley Manufacturing Company. The money was paid — court and paid out for costs due by them,

and on their debts, and they received the benefit of it. Cer-
474 tainly not to require payment to the purchasers of this amount before restitution, would seem to be inequitable. This much is stated now, as it was stated orally at the time of rendering the decree for restitution, for the purpose of making understood what is now said on the proceeding at present before the court.

In accordance with the decision of the appellate court, after entry of the mandate, the original suit for a foreclosure standing open by the reversal for further action, was referred to a master who made his report, and certain exceptions to it have been overruled,—the exceptions really being to the same effect as the questions raised by the Huguley Manufacturing Company, on their application for restitution.

The case is now ripe for a decree of foreclosure of the mortgage as to such of the bonds as the master finds did not accept their interest at the time of the default in January—The Huguley Manufacturing Company failed to comply with the condition in the order for restitution, by paying the $10,000.00, and there has consequently been no restitution. As a result the possession of the purchasers has not been disturbed, and the serious question is as to what decree should now be entered beyond the decree foreclosing the mortgage for the amount of the bonds reported by the master.

It is contended for the complainants that there should be a decree confirming the original sale and the title in the purchasers; and on the other hand, that the only decree the court can enter is a decree for the resale of the property. The argument for the former position is, that the court having by its order for restitution, provided that such restitution should only be made on condition, and such condition not having been complied with, it leaves the purchasers in the rightful possession of the property, and that no sale of the property which would be effective could now be made. For the latter position the contention is, that if, by the decree of reversal of the appellate court, all the proceedings subsequent to the ren-
475 dition of the original decree were annulled, the title to the property in question, as a result, fails, and there is nothing for the court to do but appoint a commissioner and sell it again.

This presents a very difficult question. The case is in an anomalous situation. There is force in the contention that in view of the former ruling of the court that restitution could only be had on condition, that the non-compliance with that condition left the title to the property in the purchasers, and that they are entitled to a decree confirming such title. On the other hand, the argument is, that the motion for restitution was a mere application to have *possession* of the property restored, and did not necessarily affect such title, but simply to determine the matter of right to possession. But the court is now rendering a decree, giving judgment and fixing a lien on the property in issue, for the amount reported by the master, namely, the amount of bonds in default and which may be properly

foreclosed under the rulings of this court and of the appellate court with interest thereon.

Now what shall be done with this judgment? That it is necessary that a decree of foreclosure should be rendered, all parties to the case agree. It will determine that a lien on this property exists, and has existed all along, for the amount reported by the master. Such being the situation, is it material to determine the exact status of the purchasers as to title or possession? In the peculiar condition of the case, they hold it certainly subject to the lien of the mortgage for the amount to be named in this new decree now to be entered. The defendant company claims that it has the right to have this property sold under a valid decree. Perhaps it has. Certainly no harm can be accrued to these purchasers if the amount of the debt outstanding, and which they control, is as they state it, and the value of the property such as they contend. All this can be determined, however, and the right of all parties protected, by the direction which will now be given in the case. There is but one prac-
476 tical course, and that is to provide in the present decree, for the appointment of a commissioner and re-sale of the property. The rights of these purchasers as to the amount heretofore paid into this court, in connection with this proceeding, is still in the entire control of the court and can be fully protected to any extent that such rights may exist, by proper order in distributing the funds arising from the sale.

Let a decree be framed carrying into effect these views.

This March 9th, 1895.

WM. T. NEWMAN,
U. S. Judge.

Filed in office March 9, 1895.

O. C. FULLER, *Clerk*,
By GEO. S. BARNARD, *Deputy.*

Final Decree.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } No. 360. In Equity. Foreclosure of Mortgage.

This cause came on to be heard at this term of the court and was *urged* by counsel, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. The court finds, that default was made in the payment of the interest on all the bonds issued by the Alabama and Georgia Manufacturing Co. and to secure with the trust deed sought in this suit to be foreclosed was executed, to-wit, Nos. from 1 to 130 inclusive,

which interest became due on July 1st, 1890, and that said default continued for a period longer than six months, and by reason of such default in the payment of said interest for a period longer than six months the principal and interest on each of said bonds become due and payable on and after the first day of January, 1891.

2. The court finds, that after said default had occurred as
477 found above, but before the filing of this suit, the holders of Nos. 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, being forty bonds in number, accepted the interest on the said bonds, and by the accepting of said interest they waived the default, and the principal of said bonds amounting to the aggregate sum of twenty thousand ($20,000) dollars was not due and payable at the date of filing this suit, and that said trust deed can not be foreclosed for said amount of said forty bonds.

3. The court finds, that interest was not accepted on the bonds, ninety in number, to-wit: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 129 and 130, and said default is hereinbefore found to have occurred was not waived and said trust deed can be foreclosed for the amount due on said ninety bonds, the principal due thereon being the sum of forty-five thousand ($45,000) dollars, with accrued interest.

4. The court finds, of .those bonds upon which the interest was accepted and the default waived, Nos. 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117 and 118 belonged to Mrs. H. S. Huguley, now Mrs. Kyle, and the amount of the principal is six thousand ($6,000) dollars; and the accrued interest unpaid is coupons 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty ($560) dollars; and the interest due on the coupons to November 1st, 1894, is one hundred and six dollars and fifty-six one-hundredths ($106.56), making due as the total amount of said twelve bonds, six thousand six hundred and sixty-six and fifty-six one-hundredths ($6,666.56) dollars at said date. No. 75 belongs to Mrs. S. E.
478 Elliott, and the principal is ($500), and the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of eighty ($80) dollars; and interest due on the coupons is eight and 88-100 ($8.88) dollars; making total amount of said bond five hundred and eighty-eight and 88-100 ($588.88) dollars, Nov. 1st, 1894. Nos. 76, 78, 79 and 80 belong to J. E. Elliott and the aggregate principal is two thousand ($2,000) dollars; and the accrued interest is unpaid coupons Nos. 17, 18, 19 and 20 amounting in the aggregate to three hundred and twenty ($320) dollars, the interest due on these coupons is thirty-five and fifty-two hundredths ($35.52) dollars; making a total of said four bonds, principal and

interest, November 1, 1894, twenty-three hundred and fifty-five and 52-100 ($2,355.52) dollars. Nos. 111, 112, 113 and 114 belong to T. H. Huguley, the principal and interest, numbers of coupons, of unpaid interest, and interest on coupons being exactly in amounts corresponding to last four bonds belonging to J. E. Elliott, total being twenty-three hundred and fifty-five and 52-100 dollars. Nos. 125, 126, 127 and 128 belong to the Atlanta national bank; the aggregate principal is two thousand ($2,000) dollars and the accrued interest is unpaid coupons Nos. 14, 15, 16, 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty ($560) dollars; interest due on these coupons is ninety-one and 56-100 ($91.56) dollars; making total of said four bonds two thousand six hundred and fifty-one and 56-100 ($2,651.56) dollars, Nov. 1, 1894. Nos. 84, 85 and 86 belong to Loula A. Elliott, aggregate principal being fifteen hundred ($1,500) dollars; accrued interest unpaid coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of two hundred and forty ($240) dollars; interest on coupons, twenty-six and 64-100 ($26.64) dollars; making total of said three bonds seventeen hundred and sixty-six and 64-100 ($1,766.64) dollars, to Nov. 1, 1894. Nos. 119, 120 and 121 belong to G. A. Huguley, and the principal and accrued interest in
479 unpaid coupons, and interest on coupons is identical with numbers belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64-100 [$1,766.64] dollars, Nov. 1, 1894. Nos. 122, 123 and 124, belong to T. H. Hooper; principal, interest coupons unpaid, and interest on coupons identical with those belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64-100 [1,766.64] dollars, November 1, 1894. Nos. 77, 81, 82, 83, 87 and 88 belong to L. Lanier; principal in aggregate three thousand [$3,000] dollars; accrued interest in unpaid coupons Nos. 17, 18, 19 and 20, four hundred and eighty [$480] dollars; interest on coupons fifty-three and 28-100 [$53.28] dollars; making total of six bonds, thirty-five hundred and thirty-three and 28-100 [$3,533.28] dollars, November 1, 1894. Making a total of twenty thousand [$20,000] dollars principal at the date of filing this suit which was not due, and on said bonds since filing this suit has accrued thirty-four hundred and fifty-one and 24-100 [$3,451.24] in unpaid coupons and interest on coupons to November 1, 1894.

5. The court finds, that of those bonds on which interest was not accepted and the default was not waived, Nos. 37 to 66 inclusive, belong to Mrs. L. Lanier, guardian of Susie Huguley; aggregate principal due at date of filing suit fifteen thousand ($15,900) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, forty-eight hundred ($4,800) dollars, interest on coupons to Nov. 1st, 1894, eight hundred and sixty-eight 80-100 ($868.80) dollars; making total due on said bonds to Nov. 1st, 1894, twenty thousand six hundred and sixty-eight and 80-100 ($20,668.80) dollars. Nos. 21 to 36 inclusive, belong to Mrs. L. Yancy; aggregate principal due date of filing, eight thousand ($8,000) dollars, accrued interest in unpaid coupons,

Nos. 13 to 20 inclusive, aggregate twenty-five hundred and sixty ($2,560) dollars; interest on coupons to Nov. 1st, 1894, four hundred and sixty-three and 12-100 ($463.12) dollars; making total
480 due on sixteen bonds eleven thousand and twenty-three and 12-100 ($11,023.12), dollars. Nos. 1, 2, 3, and 4, belong to Mrs. A. D. Moon; Nos. 5, 6, 7, and 8, belong to the heirs of Julia A. Walker; Nos. 11, 12, 13, and 14 belong to Lavinia Hackney; Nos. 17, 18, 19 and 20 belong to Mrs. Lou King. Amount of aggregate principal of each of the above blocks of four bonds is two thousand ($2,000) dollars, due at date of filing this suit; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, six hundred and forty ($640) dollars; interest on coupons to Nov. 1st, 1894, one hundred and fifteen and 78-100 ($115.78) dollars, making total on each block of four bonds twenty-seven hundred and fifty-five and 78-100 ($2,755.78) dollars. Nos. 7 and 8 belong to Joel Walker, Nos. 9 and 10 belong to G. A. Huguley Nos. 129 and 130 belong to Demetrious Jannopoulo; amount of aggregate principal due on each block of two bonds above is one thousand ($1,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, aggregates three hundred and twenty ($320) dollars; interest on coupons fifty-seven and 92-100 ($57.92) dollars, to Nov. 1st, 1894; making total due on each block of two bonds, Nov. 1, 1894, principal and interest thirteen hundred and seventy-seven and 92-100 ($1,377.92) dollars. Nos. 99 to 104, both inclusive, belong to S. D. Hutchinson; Nos. 105 to 110, both inclusive, belong to E. J. Nolan; the amount of the aggregate principal due on each of the last two blocks of six bonds each is three thousand ($3,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, is nine hundred and sixty ($960) dollars; interest on coupons to Nov. 1st, 1894, one hundred and seventy-three and 76-100 ($173.76) dollars, making total on each of said blocks of six bonds Nov. 1st, 1894, principal and interest, forty-one hundred and thirty-three and 76-100 ($4,133.76) dollars. Nos. 89 to 98 inclusive, belong to A. T. Dallas; the aggregate principal due on said ten bonds is five thousand ($5,000) dollars; the accrued interest in unpaid coupons
481 Nos. 13 to 20 inclusive, one thousand ($1,000) dollars; interest on coupons to Nov. 1, 1894, two hundred and eighty-nine and 60-100 ($289.60) dollars. Making a total on said ten bonds principal and interest to Nov. 1st, 1894, $6,889 60-100 dollars making a total of principal due on the said ninety bonds upon which interest was not paid and accepted and the default waived of forty-five thousand ($45,000) dollars, and total interest due up to November 1st, 1894, seventeen thousand and five and 92-100 ($17,005.92) dollars.

6. And it is further adjudged and decreed, that the plaintiff do recover of and from the said Alabama & Georgia Manufacturing Company the said sum of forty-five thousand ($45,000) dollars principal, and seventeen thousand and five and 92-100 ($17,005.92) dollars for interest up to the 1st day of November, 1894, with all accruing interest on said principal from said date until paid, at 8 per cent. per annum and — dollars as cost of this cause, the said sums

to be satisfied out of the mortgaged premises hereinafter described, that is to say "all of a large island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three (143) acres, more or less; also Island No. 9, containing seven (7) acres, more or less; also a small island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less; all of said three above described islands being in the 20th, district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above described islands bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the (7) acre island, at a black gum, at or near a place known as Sell's corner; thence in a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell, joins, known as the Ross and Freeman corner, to a pine stake; thence in a line to a branch
482 near said stake, thence in a line down said branch to said river; thence down the western bank of said river to the beginning point, containing sixty-five and 23-100 (65.23) acres, more or less, lying and being in Chambers county, State of Alabama, and being part of section twenty-eight and section twenty-nine (28 and 29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right of way from factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now, or hereafter owned or enjoyed by said Alabama & Georgia Manufacturing Company.

7. It is further ordered and decreed that the remainder of said bonds, to-wit forty (40) in number, which are numbers as set out in paragraph 2 of this decree for the aggregate sum of twenty thousand ($20,000) dollars and for the sum of three thousand four hundred and fifty-one and 24-100 ($3,451.24) dollars, interest thereon to November 1, 1894, were not due at the time of the filing of this suit, and said plaintiff as trustee is not entitled to recover therefor.

8. That the equity of redemption in and to said mortgaged premises be and the same is hereby barred and forever foreclosed, so far as the right of said defendant corporation, or any one claiming under or through it is concerned, since the date of the execution of said trust deed or mortgage, to-wit the 2nd day of January, 1884.

9. It is further adjudged and decreed that unless the said defendant shall pay into this court, within 30 days from this date, the said sums of money, to-wit: forty-five thousand ($45,000) dollars principal, and seventeen thousand and five and 92-100 ($17,005.92) dollars interest, with all accruing interest at 8 per cent., as in this decree adjudged to be due, together with the cost of this cause; then
483 on failure to so pay in the same Samuel C. Dunlap, Esquire, who is hereby appointed commissioner of this court to advertise and offer the said property for sale, on the following

terms and conditions: Said commissioner will advertise said property once a week for four weeks in the daily Constitution newspaper published in the city of Atlanta and in the Hamilton Journal published in Hamilton, Harris county, Georgia, prior to the offering said property for sale, and on Tuesday, the fourth day of June, 1895, at twelve o'clock, he will offer the same for sale to the highest bidder before the court house door in the town of Hamilton, Harris county, Georgia. Said commissioner will report to this court the name of the highest bidder, with the amount of his bid, for the confirmation or rejection. He shall require the person bidding off said property, should he be a person other than one representing a majority in amount of the outstanding bonds of said company, to pay into the hands of the commissioner ten thousand ($10,000) dollars, to insure compliance with his bid, in case the sale is confirmed. Any bondholder may bid on said property and in case it shall be bid off by any person for — on behalf of the holders of a majority of said bonds in amount, then such purchaser shall not be required to pay into the hands of the commissioner pending his report and confirmation or rejection any more than $5,000 to cover costs, fees and expenses of sale.

10. And it is further adjudged and decreed, that in case the holders of said bonds or any of them, purchase said property, they shall be entitled on confirmation to pay the balance of the purchase money in and with the bonds of said company whether the same have matured or not, in the proportion and to the extent that such bonds would be entitled to share in the proceeds of sale if all the purchase money was paid in cash.

11. It is further ordered and decreed, that in case said defendant fails to pay into court the said sums hereby decreed to have
484 matured at the time of the filing of the bill, within the time herein allowed, and in case the property is sold and the proceeds *is* brought into court for distribution then and in that event the bonds hereby decreed not to have matured at the time of the filing of this bill which bonds are described in paragraph 2 of this decree, are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the special master with all accruing interest and the holders and owners of said bonds may present them, with coupons attached, for their proper *pro rata* share of said proceeds according to their tenor and effect.

The court being of the opinion that the property decreed to be sold is indivisible and can not be sold to satisfy that portion of the bonds which are hereby decreed to have matured without destroying the value of the property as security for said bonds. And it further appearing that the defendant is insolvent and has ceased to do business; and it further appearing that the said bonds described in the second paragraph of this decree have become due since the filing of the bill by reason of non-payment of interest.

12. The rights of the purchaser of the said property at the sale heretofore made as to amount paid into court are reserved and sub-

ject to any other and further decree as to the court may seem meet and proper.

The court also reserves the right to make any other and further decree in reference to the entries of credits on said bonds and the control of the same as shall appear to be proper on final distribution as well as to make any further decree in conformity with the general scope hereof as well as to make any order or decree adjusting the claim of defendants for costs in the court of appeal-.

13. It is further ordered and decreed, that for any balance of said sums hereby adjudged to be due, which may remain unsatisfied after the sale of said property the said plaintiff may have execution therefore against said defendants.

In open court March 30, 1895.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office, 1st day of April, 1895.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy.*

485 The commissioner named in the foregoing decree having failed to advertise the property described in this decree for sale on the first Tuesday in June, 1895, for want of time. It is now ordered and decreed that this decree be amended so that the commissioner Samuel C. Dunlap, Esq., be and he is hereby ordered and directed to offer said property for sale on the first Tuesday in July, 1895, after due advertisement as in said decree provided instead of the first Tuesday in June, 1895.

In open court this 27 May, 1895.

WM. T. NEWMAN,
U. S. Judge.

Petition and Order for Appeal.

Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee & Plaintiff, Respondent,
vs.
THE ALA. & GA. MFG. CO., HUGULEY MFG. CO., & WILLIAM T. Huguley, Appellants.

The above named defendants, The Alabama & Georgia Mfg. Co., Huguley Mfg. Co., and William T. Huguley, conceiving themselves aggrieved by the order and decree entered on March 30, 1895, in the above entitled proceeding do hereby appeal from said order to the United States circuit court of appeals for the fifth circuit, at New Orleans, La., and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon

which said order and decree were made, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Defendants and Appellants, The Alabama &
486 *Georgia Mfg. Co., Huguley Mfg. Co., and William T. Huguley.*

Atlanta, Ga., June 8th, 1895.

And now to-wit, on June the 8th, 1895, it is ordered that the appeal be allowed as prayed for.

WM. T. NEWMAN,
U. S. Judge.

Acknowledgment of Service.

Due and legal service of the within appeal and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived.
June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson, Trustee.

Filed in clerk's office 8th day of June, 1895.

O. C. FULLER, *Clerk.*

In the Circuit Court of the U. S. for the Northern District of Georgia.

J. J. ROBINSON, Trustee, Appellee,
vs.
ALA. & GA. MFG. CO. ET AL., Appellants.

The said appellants having prayed an order fixing the amount of a bond which shall operate as a supersedeas of the final decree ordering a sale in this cause. It is ordered, that the amount of said bond be and the same is hereby fixed at the sum of $5,000.
June 8, 1895.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office, 8th day of June, 1895.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To J. J. Robinson, trustee, &c., Greetings:

487 You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fifth circuit to be holden at New Orleans, in the State of Louisiana, on the 3d Monday in November, 1895, pursuant to an appeal, filed in the clerk's office of the United States circuit court for the northern district of Georgia, wherein The Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company and William T. Huguley are appellants, and J. J. Robinson, trustee, &c., is respondent, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of June, in the year of our Lord, 1895.

WM. T. NEWMAN,
U. S. Judge.

Acknowledgment — Service.

Due and legal service of the within and foregoing citation on appeal, and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived this 8th day of June, 1895.

P. H. BREWSTER,
B. F. ABBOTT,
Att'ys for Robinson, Trustee.

In the Circuit Court of the United States for Northern District of Georgia.

J. J. ROBINSON, Trustee & Plaintiff,
vs.
THE ALA. & GA. MFG. CO., HUGULEY MFG. CO., & WILLIAM T. HUGULEY.

Assignment of Errors.

The Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company and William T. Huguley, having
488 prayed and taken an appeal in the above entitled cause, now jointly and severally assign the following errors:

1. The court erred in rendering the said final decree without first having required restitution to be made of the property sold under the first decree which was reversed.

2. The court erred in not having ascertained, or in not directing to be ascertained, before proceeding to said final decree, the value of the rents and profits of the property which had been sold under the prior decree of foreclosure, which was reversed, said rents and profits being claimed in the petition of the defendants of file in the case.

3. The court erred in refusing to grant the petition filed by the defendants in said case, praying to be restored to the possession of the mortgaged property, and for an account of the rents and profits thereof.

4. The court erred in the decretal order of date, September 22nd, 1894, whereby it required the sum of $10,000.00 should be paid into court as a condition precedent to restitution of the mortgaged property, and as condition precedent to an accounting for the rents and profits of said mortgaged property.

5. The court erred in the decretal order last aforesaid in requiring re-imbursement to be made by the defendants to said purchasers as a part of said $10,000 of the sum of $5,897.50, paid by said purchasers for the purchase of bonds owned by Mrs. S. H. Huguley and D. Jannopoulo, said bonds not being in default, and the owners of the same declining to join with the other bondholders in the purchase of the property, and no part of said sum of $5,897.50 having been paid into court.

6. The court erred in decretal order last aforesaid in ruling that as much as $10,000 was paid into court by the purchasers at the day of sale, it being the fact as appears in the record that only $4,102.50 was paid into court, of which last mentioned sum
489 about $3,250 was reimbursed to said purchasers by assessments made against the bondholders, wherefore it appears said purchasers really paid into court only $857.50.

7. The court erred in the decretal order last aforesaid in requiring re-imbursement to be made by defendants to said purchasers as a part of said $10,000, the sum of $2,600 fees of solicitors of complainants satisfied out of the $4,102.50 actually paid into court as stated above, the record not showing any liability of defendants for the same, and the court having previously decided that said fees were payable only out of the fund after it had been brought into court, and were not charg-ably against the defendant, reserving his final decisions as to allowing these fees until these fees had been brought into court.

8. The court erred in the decretal order last aforesaid, in denying the motion of Huguley Manufacturing Company *et al.*, to refer the question of mesne profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition of restitution, in order that the one might

be set off against the other, in case it should appear that mesne profits had so accrued.

9. Said court erred in its decretal order of date October 20, 1894, amending and modifying a decretal order of reference of date September 22d, 1894, said errors being as follows, to-wit:

(1.) Said amended order improperly excluded from consideration by the master all evidence going to show that there was at the date of the default in interest alleged in the bill, sufficient money at the office of the Alabama and Georgia Manufacturing Company, at West Point, Ga., to pay such interest, and that such fund was there for such purpose, and that no demand was there made for same; and that said fund was then and there in the hands of W. H. Huguley & Co. for said purpose.

490 (2.) The court erred in refusing to direct said master to take evidence and report the fact, nature and extent of any default constituting a breach of the condition of the mortgage which said bill is filed to foreclose. Which said prayer was incorporated in the answer filed October 20, 1894, in response to a rule to show cause why said former order of reference should not be amended.

10. Said final decree of March 30th, 1895, is erroneous in that it is not sustained by the evidence.

11. Said final decree is erroneous in that it finds due and in default a very much larger amount of the principal and interest of the bonds than is disclosed by the master's report $43,000 instead of $45,000 being the proper amount of principal.

12. Said final decree is erroneous in that it adjudges that all the defendants are liable for the debt therein ascertained to be due.

13. Said decree is erroneous in that Huguley Manufacturing Company is or could be made, by the terms of said decree, liable for the debt, secured by said mortgage, or some portion thereof.

14. Said decree is erroneous in that under the evidence the complainant was not entitled to a foreclosure of any of the debts secured by said mortgage, in that no proper demand had ever been made for the payment of said interest.

Said decree is erroneous in that it is disclosed by the evidence that the *cestuis que trust* of the complainant have been in possession of said mortgaged property without a valid foreclosure of said mortgage, and if anything was due on said mortgage debt it was due only after an accounting in which said *cestius que trust* should have been charged with rents, incomes and profits, wastes and conversions of said property.

15. Said decree is erroneous in that it is not in conformity
491 to the mandate of the U. S. circuit court of appeals on its decision of this cause on a former appeal.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors for Appellants.

Acknowledgment of Service.

Due and legal service of the within assignment of errors, and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived.

June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson, Trustee.

Filed in clerk's office 8th day of June, 1895.

O. C. FULLER, *Clerk.*

Petition for Order Extending Time, etc.

To honorable the United States circuit court of appeal- for the fifth circuit:

1. Your petitioner- The Alabama & Georgia Manufacturing Company and The Huguley Manufacturing Company and William T. Huguley, respectfully represent to the court that they are defendants to a suit in equity brought by J. J. Robinson, trustee, in the circuit court of the United States for the northern district of Georgia in which was sought the foreclosure of a mortgage executed to secure the bonds of said The Alabama & Georgia Manufacturing Company.

2. That a decree of foreclosure was entered in said cause on the 30th day of March, 1895, directing a master to sell the mortgaged premises on the 4th day of June, 1895, if the debt ascertained to be due should not be paid before the expiration of 30 days from the date of said decree. A copy of said decree is embraced in a transcript hereto attached as Exhibit "A."

492 3. That on the 27th day of May, 1895, said final decree was amended by another decree fixing the date of sale on the first Tuesday in July, 1895. A copy of said amendment is hereto attached marked Exhibit "B."

4. That the property is now advertised for sale under the decree as amended and will be sold on the 8th, day of July, 1895, unless a supersedeas is ordered by this honorable court.

5. That on the 8th, day of June, 1895, which was within sixty days, (Sundays excluded) from the date of the decree of March 30th, your petitioners filed and the judge allowed an appeal to this court from said final decree, and at the same time, assignments of errors were filed in said court, and an order was made requiring that a bond in the sum of five thousand dollars be executed to supersede said decree. That on the same day a copy of said appeal papers was served on the solicitors of said Robinson in said cause, and service of same was endorsed by said solicitors as follows:

"Due and legalservice of the within appeal and of a copy of th same is hereby acknowledged, and all other and further servic and notice waived.

June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson, Trustee.

All of which will appear as parts of said Exhibit "A."

6. That a supersedeas bond was signed and ready to be filed th same day except as to the surety. The delay in preparing and ob taining security on said bond is explained in the affidavits of W. R Hammond and W. T. Huguley herewith submitted as Exhibit "C" and "D." That under the advice and opinion of Solicitors Hall & Hammond that said bond would be in time if filed on the 10th, said Huguley went to his home in West Point, Georgia, to arrange the brokerage or commission to be paid Dr. J. B. Redwine, a local capitalist of Atlanta who had agreed to sign it. That the arrangements was perfected so as to file the bond on the 10th, when said

493 W. R. Hammond, on a more accurate calculation, advised that the time had expired on the 8th, and that leave to file said bond, would have to be asked of this honorable court.

That said bond has been executed, is perfectly solvent and petitioners are ready to file the same, and it is now here shown to the court.

The premises considered, your petitioners pray, that an order proceed from this court directing that said supersedeas bond be filed with the clerk of the circuit court of the United States for the northern district of Georgia, and, that the judge of said court be authorized and required to approve same notwithstanding the expiration of said 60 days from the date of said final decree; and further directing that said bond when approved, shall operate a supersedeas. And petitioners pray for any other order in the cause that may be necessary in order to obtain a supersedeas of said judgment.

Petitioners also pray that the time for filing the transcript of the record in said cause, be enlarged from 60 days from the 8th day of June, 1895, said extension of time being necessary for completion of the transcript of the record.

That the judge of the court below made such an order on the 21st of June, 1895, one day after the change of the rule by this court.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors — Appellant.

Order Extending Time, etc.

United States Circuit Court of Appeals for the Fifth District.

HUGULEY MANUFACTURING CO., W. T. HUGULEY, and THE ALABAMA & GEORGIA Mfg. Co., Appellants,
vs.
J. J. ROBINSON, Appellee.

Appeal from the circuit court of the United States, northern district of Georgia.

494 Upon consideration of the petition of the above named appellants, praying for an enlargement of the time in which to execute a supersedeas bond and also praying that the time for filing the transcript in said case be extended.

It is ordered:

First, that the time for executing a supersedeas bond in said cause be and the same is hereby extended ten days from this date, such bond to be filed with the clerk of the court below and with sufficient security to be approved by the judge of the court below, in the sum fixed by said judge.

Second, for cause shown it is ordered that the time for filing the transcript of the record in said cause is hereby enlarged to sixty days from June 8th, 1895.

DON A. PARDEE,
Circuit Judge.

Dated this 25th day of June, 1895.

Filing.—Filed in clerk's office 27th day of June, 1895.

O. C. FULLER, *Clerk.*
By J. D. STEWART, *Deputy.*

Supersedeas Bond.

UNITED STATES OF AMERICA,
State of Georgia, Fulton County.

Know all men by these presents that we, The Alabama & Georgia Manufacturing Company, William T. Huguley and J. B. Redwine, security are held and firmly bound unto J. J. Robinson, trustee, in the sum of $5,000 for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors or administrators and successors, jointly and severally, firmly by these presents.

Dated this 8th day of June, 1895.

The condition of the above obligation is such that whereas in the circuit court of the United States for the northern district of Georgia, in a suit depending in said court, between J. J. Robinson, trustee, complainant and The Alabama & Georgia Manufacturing
495 Company, The Huguley Manufacturing Company, and William T. Huguley defendants, a final decree was rendered by said court on, to-wit, 30th March, 1895, against said defendants from which decree they have taken an appeal to the United States circuit court of appeals for the fifth circuit.

Now if the said appellants shall prosecute their said appeal to affect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

THE ALABAMA & GEORGIA MFG. CO.,
By W. H. HUGULEY, *President.*
WM. T. HUGULEY.
J. B. REDWINE, *Security.*

Order approving bond, approved this 27th day of June, '95.
WM. T. NEWMAN, *U. S. Judge.*

STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned, J. B. Redwine, who being sworn says that he signed the within bond as surety, and that he is worth at least twenty-five thousand dollars above all debts and liabilities.

J. B. REDWINE.

Sworn to and subscribed before me June 21, 1895.
C. M. CURREN,
Notary Public, Fulton County, Ga.

Filing.—Filed in clerk's office 27 day of June, 1895.
O. C. FULLER, *Clerk,*
By J. D. STEWART, *Deputy.*

Order Approving Bond.

It is ordered that the bond herewith presented, signed by the Alabama & Georgia Mfg. Co., and Wm. T. Huguley as principal, and J. B. Redwine as surety be approved and filed and the same is hereby allowed as a supersedeas bond in said cause, and that the decree of this court by superseded until the judgment of the U. S.
496–500 circuit court of appeals be rendered in said cause, or until the further order of this court.

June 28, 1895.

WM. T. NEWMAN,
U. S. Judge.

501 U. S. Circuit Court of Appeals for the Fifth Circuit.

HUGULEY MANUFACTURING COMPANY, Appellants,
versus
GALETON COTTON MILLS ET AL., Appellees.

To O. C. Fuller, clerk of the U. S. circuit court for the northern district of Georgia:

You will please note the following directions, in copying the documentary evidence, in the above-stated cause:

1. You will only copy such portions of the Atkinson & Turner cotton books as are embraced between the dates of Sept. 6, 1892, and May 6, 1896. In copying said books, you will omit the names of the persons from whom the cotton was purchased, and the marks on the bales, copying only the weights and prices. Where the book shows the aggregate weight of cotton purchased during a single day, and the aggregate price paid, you will only copy the aggregate weights and prices for each day. Where the books show the prices per pound paid for any lot of cotton you will copy that.

2. In copying the Galeton Cotton Mills books, you will only copy the date, weights and prices, omitting the numbers and marks on the bales, and the names of the sellers. Where the weights and prices are aggregated on the book for each date, you will simply copy the aggregate weights of all the bales, and the aggregate price paid, as shown by the book, and the price per pound, where that is shown, omitting the separate weight of each bale, but only in cases where the aggregate weights are shown and the aggregate prices corresponding to the aggregate weights are shown. In copying the first Galeton cotton book, you will omit the memoranda on pages 258 to 299 inclusive, as they were not read in evidence and have no connection with the case.

3. You will not copy the cotton book of J. T. Zachry, as it shows substantially the same thing as the cotton books of Atkinson & Turner, and is enormously bulky, and was only used on the hearing to show the prices of cotton.

4. You will omit all depositions or interrogatories taken on the hearing before the master, which the record discloses were ruled out, or not considered by him, the same being as follows: J. T. Frazier's and Logan Owen's, they having been sworn and having testified before the master; John W. Dickey's, which were not offered; J. W. Brown's and Geo. W. Hamilton's (taken jointly) not offered, Geo. W. Hamilton having been sworn and having testified before the master; first set of T. A. Burke, which were ruled out, only the second set having been read in evidence.

5. There are certain matters that are merely formal upon which no question was raised, or can be raised, which are not necessary to the hearing of the case on appeal, which you are directed to omit, as follows:

(*a.*) All commissions to take interrogatories;
(*b.*) All certificates of the commissioners to the execution of interrogatories. You will only give the names of the witnesses,
502 the dates when the interrogatories were executed, and the questions and answers.

6. There are two sets of interrogatories where the same set of questions and cross-questions were asked the witnesses, in the same identical language. These are James S. Hamilton and T. A. Burke. You will copy the questions and cross-questions only once, and the answers of the witnesses immediately following them.

7. In several sets of interrogatories there is a long inventory of machinery etc., which is a part of the second direct interrogatory. This inventory is found on pages 158 to 162 of the record. You will copy this inventory only once, and in the other sets where it is copied you will simply make a reference to the copy thus made, and omit copying it.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

Messrs. B. F. Abbott and P. H. Brewster, counsel for appellees:

You will please take notice that we have this day filed the foregoing directions with the clerk of the U. S. circuit court for the northern district of Georgia, in reference to the making up the record and proofs in the case therein stated, Dec. 23, 1898.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned, Howard H. Arnold, who, after being duly sworn, deposes and says that he this day carried the original paper hereto attached to Mr. B. F. Abbott, with a copy of the same, from W. R. Hammond, and requested him to keep the copy and acknowledge service of the original. Mr. Abbott kept both papers, and deponent came back to Mr. Hammond's office without them.

HOWARD H. ARNOLD.

Sworn to and subscribed before me this the 23rd day of December, 1898.

O. C. FULLER,
Clerk U. S. Circuit Court, N. D. of Ga.

Filing.—Filed in clerk's office Dec. 23, 1898.

O. C. FULLER, *Clerk.*

O. C. Fuller, clerk United States circuit court, northern district of Georgia:

In making up the record in the above-stated case for the court of appeals you will omit from the evidence a letter-press book showing fortnightly reports of the superintendent of the Alabama & Georgia Mfg. Co. from Feb. 28, 1885, to May 31, 1896, being 223 pages
503 in all, which was introduced in evidence by the defendants as we do not propose to dispute the testimony of the witness, William Brown, as to the average production of the spindles of that mill during that time, which testimony is based upon said copies of said fortnightly reports contained in said book.

You will also omit a memorandum from which the same witness testified and which was filed as a part of the evidence and marked "C" by the stenographer, which memorandum was introduced for the same purpose as the book above referred to, and was taken by the witness from the book, as stated by him, since we will not dispute the testimony of the witness, William Brown as to the average production of the spindles as above stated.

Dec. 26, 1898.

J. M. CHILTON,
W. R. HAMMOND,
Counsel for Appellant.

STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned W. R. Hammond, who, being duly sworn, deposes and says that he this day deposited in the U. S. mail a copy of the foregoing paper, in an envelope, duly stamped and addressed to B. F. Abbott and P. H. Brewster, counsel for appellees, to their P. O. address, Atlanta, Ga.

W. R. HAMMOND.

Sworn to and subscribed before me Dec. 27, 1898.

[SEAL N. P.]

R. L. FOREMAN,
N. P., Fulton Co., Ga.

Filing.—Filed in clerk's office 27 day of Dec., 1898.

O. C. FULLER, *Clerk.*

Mr. O. C. Fuller, clerk United States circuit court for the northern district of Georgia:

In making up the transcript of the records and proofs in the above stated case, you will please omit and not copy the stock book of the Alabama & Georgia Mfg. Co., testified about by the witness Lang, in his testimony showing the production of the Alabama & Georgia mills from 1882 to 1888, as counsel for appellant will not controvert the statement made by the witness Lang in his testimony

concerning the production of the Alabama & Georgia mills during the period covered by said stock book. This book is not material to the hearing of the case in the court of appeals, and you will please not copy it.

Dec. 29, 1898.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors for Appellant.

504 STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned W. R. Hammond, who, being duly sworn, deposes and says that he has this day mailed a copy of the foregoing papers to B. F. Abbott and P. H. Brewster, attorneys for appellants in above-stated case, by inclosing the same in an envelope duly stamped and addressed to them to their post-office address at Atlanta, Ga.

W. R. HAMMOND.

Sworn to and subscribed before me Dec. 29, 1898.

O. C. FULLER,
Clerk U. S. Circuit Court.

Filing.—Filed in clerk's office Dec. 29, 1898.

O. C. FULLER, *Clerk.*

ATLANTA, GA., *January 6th*, 1899.

Mr. O. C. Fuller, cl'k U. S. circuit court, Atlanta, Ga.

DEAR SIR: We have been notified by counsel for appellant in the case of J. J. Robinson, trustee, *vs.* Ala. & Ga. Mfg. Co., and The *the* Huguley Mfg. Co., *et al.*, No. 360, that they have requested you to omit from the record in transmitting the same to the court of appeals, certain books, papers and other pieces of evidence. Under the assignment of error, as shown by the record, we think that all of the testimony, as introduced on the trial of the cause before the special master, should be transmitted. We object therefore to the omission from the record of the various pieces of evidence designated by counsel, or any of the evidence; especially do we object to the omission of the books of Zachry, the warehouseman at West Point.

Respectfully yours,

P. H. BREWSTER,
B. F. ABBOTT,
Solicitors for Appellees.

Circuit Court U. S., Northern Dist. of Ga.

J. J. ROBINSON ET AL.
vs.
ALABAMA & GEORGIA MANUFACTURING CO. ET AL. } 360. In Equity.

Appeal to the circuit court of appeals for the fifth circuit of the United States.

We agree that the clerk, in making up the record, may omit therefrom all such parts as appear in the record made up and transmitted on the two former appeals in this case to said circuit court of appeals.

And either party, on the hearing of this appeal, may be at
505 liberty to refer to any such parts of the record of said former appeals, or either of them, as they may see proper.

Jan'y 14, 1899.

J. M. CHILTON,
W. R. HAMMOND,
Att'ys for Appellant.
B. F. ABBOTT, *Solicitor as of Record.*
DORSEY, BREWSTER & HOWELL.

Filing.—Filed in clerk's office 14 day of Jan'y, 1899.

O. C. FULLER, *Clerk.*

Mandate of Court of Appeals.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Georgia, Greeting:

Whereas, lately in the circuit court of the United States for the northern district of Georgia, before you, or some of you, in a cause between J. J. Robinson, trustee, complainant, and The Alabama and Georgia Manufacturing Company and others respondents, wherein a final decree was rendered by the said circuit court as follows, to wit:

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON ET AL.
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } No. 360. In Equity.

Foreclosure of Mortgage.

This cause came on to be heard at this term of the court and was argued by counsel thereupon upon consideration thereof it was ordered, adjudged and decreed as follows:

1. The court finds that default was made in the payment of the interest on all the bonds issued by the Alabama and Georgia Manufacturing Co., and to secure which the trust deed sought in this suit to be foreclosed was executed, to wit: Nos. from 1 to 130 inclusive, which interest became due on July 1st, 1890, and that said default contiued for a period longer than six months, and by reason of such default in the payment of said interest for a period longer than six months the principal and interest on each of said bonds became due and payable on and after the first day of January, 1891.

2. The court finds that after said default had occurred as found above, but before the filing of this suit, the holders of Nos. 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123,
506 124, 125, 126, 127, 128, being forty bonds in number, accepted the interest on the said bonds, and by the accepting of said interest they waived the default, and the principal of said bonds amounting to the aggregate sum of twenty thousand (20,000) dollars was not due and payable at the date of filing this suit, and that said trust deed cannot be foreclosed for said amount of said forty bonds.

3. The court finds that interest was not accepted on the remainder of the bonds, ninety in number, to wit: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 129 and 130, and said default as hereinbefore found to have occurred was not waived and said trust deed can be foreclosed for the amount due on said ninety bonds, the principal due thereon being the sum of forty-five thousand (45,000) dollars, with accrued interest.

4. The court finds, of those bonds upon which the interest was accepted and the default waived, Nos. 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117 and 118, belonged to Mrs. S. H. Huguely, now Mrs. Kyle, and the amount of the principal is six thousand (6,000) dol-

lars; and the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty (560) dollars; and the interest due on the coupons to Nov. 1st, 1894, is one hundred and six (106) dollars and fifty-six (56) cents; making due as the total amount of said twelve bonds, six thousand, six hundred and sixty-six and fifty-six one-hundredths (6,666.56) dollars at said date. No. 75 belongs to Mrs. S. E. Elliott, and the principal is five hundred (500) dollars, and the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of eighty (80) dollars and interest due on the coupons is eight and 88/100 (8.88) dollars; making total amount of said bond five hundred and eighty-eight and 88/100 (588.88) dollars, Nov. 1st, 1894. Nos. 76, 78, 79 and 80 belong to J. E. Elliott and the aggregate principal is two thousand (2,000) dollars; and the accrued interest is unpaid coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to three hundred and twenty (320) dollars, the interest due on these coupons is thirty-five and fifty-two hundredths (35.52) dollars; making total of said four bonds, principal and interest, November 1, 1894, twenty-three hundred and fifty-five and 52/100 (2,355.52) dollars. Nos. 111, 112, 113, and 114 belong to T. H. Huguely, the principal and interest, numbers of coupons, of unpaid interest and interest on coupons being exactly in amounts corresponding to last four bonds belonging to J. E. Elliott, total being twenty-three hundred and fifty-five and 52/100 (2,355.52) dollars. Nos. 125, 126, 127 and 128 belong to the Atlanta national bank; the aggregate principal is two thousand (2,000) dollars, and the accrued interest is unpaid coupons Nos. 14, 15, 16, 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty (560) dollars interest due on these coupons is ninety-one and 56/100 (91.56) dollars, making total of said four bonds two thousand six hun-
507 dred and fifty-one and 56/100 (2,651.56) dollars, Nov. 1, 1894.

Nos. 84, 85 and 86 belong to Loula A. Elliott, aggregate principal being fifteen hundred (1,500) dollars; accrued interest unpaid coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of two hundred and forty (240) dollars; interest on coupons, twenty-six and 64/100 (26.64) dollars; making total of said three bonds seventeen hundred and sixty-six and 64/100 (1,766.64) dollars to Nov. 1, 1894. Nos. 119, 120 and 121 belong to G. A. Huguely, and the principal and accrued interest in unpaid coupons, and interest on coupons is identical with numbers belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64/100 (1,766.64) dollars, Nov. 1, 1894. Nos. 122, 123 and 124 belong to T. H. Hooper; principal, interest coupons unpaid, and interest on coupons identical with those belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64/100 (1,766.64) dollars, Nov. 1, 1894. Nos. 77, 81, 82, 83, 87 and 88 belong to L. Lanier; principal in aggregate three thousand (3,000) dollars; accrued interest in unpaid coupons Nos. 17, 18, 19 and 20, four hundred and eighty (480) dollars; interest on coupons fifty-three and

28/100 (53.28) dollars; making total of six bonds thirty-five hundred and thirty-three and 28/100 *and* (3,533.28) dollars, Nov. 1, 1894. Making a total of twenty thousand (20,000) dollars principal at the date of filing this suit which was not due, and on said bonds since filing this suit has accrued thirty-four hundred and fifty-one and 24/100 (3,451.24)—in unpaid coupons and interest on coupons to Nov. 1, 1894.

5. The court finds that of those bonds on which interest was not accepted and the default was not waived, Nos. 37 to 66 inclusive belong to Mrs. L. Lanier, guardian of Susie Huguely; aggregate principal due at date of filing suit fifteen thousand (15,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive forty-eight hundred (4,800) dollars, interest on coupons to Nov. 1, 1894, eight hundred and sixty-eight and 80/100 (868.80) dollars; making total due on said bonds to Nov. 1, 1894, twenty thousand six hundred and sixty-eight and 80/100 (20,668.80) dollars. Nos. 21 to 36 inclusive belong to Mrs. L. Yancey; aggregate principal due date of filing, eight thousand (8,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 iuclusive, aggregate twenty-five hundred and sixty (2,560) dollars; interest on coupons to Nov. 1, 1894, four hundred and sixty-three and 12/100 (463.12) dollars; making total due on said sixteen bonds eleven thousand and twenty-three and 12/100 (11,023.12) dollars. Nos. 1, 2, 3 and 4 belong to Mrs. A. D. Moon; Nos. 5, 6, 7 and 8 belong to the heirs of Julia A. Walker; Nos. 11, 12, 13 and 14 belong to Lavina Hackney, Nos. 17, 18, 19 and 20 belong to Mrs. Lou King. Amount of aggregate principal of each of the above blocks of four bonds is two thousand (2,000) dollars, due at date of filing this suit; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, six hundred and forty (640) dollars; interest and coupons to Nov. 1, 1894, one hundred and fifteen and 78/100 (115.78) dollars; making total on each block
508 of four bonds twenty-seven hundred and fifty-five and 78/100 (2,755.78) dollars. Nos. 7 and 8 belong to Joel Walker, Nos. 9 and 10 to belong to G. A. Huguley, Nos. 129 and 130 belong to Demetrious Janaupunto; amount of aggregate principal due on each block of two bonds above is one thousand (1,000) dollars; the accrued interest on unpaid coupons Nos. 13 to 20 inclusive, aggregates three hundred and twenty (320) dollars; interest on coupons fifty-seven and 92/100 (57.92) dollars, to Nov. 1, 1894; making total due on each block of two bonds, Nov. 1, 1894, principal and interest thirteen hundred and seventy-seven and 92/100 (1,377.92) dollars. Nos. 99 to 104, both inclusive, belong to S. D. Hutcheson; Nos. 105 to 110, both inclusive, belong to E. J. Nolan; the amount of the aggregate principal due on each of the last two blocks of six bonds each is three thousand (3,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, is nine hundred and sixty (960) dollars; interest on coupons to Nov. 1, 1894, one hundred and seventy-three and 76/100 (173.76) dollars; making total on each of said block of six bonds Nov. 1, 1894, principal and interest, forty-

one hundred and thirty-three and 76 / 100 (4,133.76) dollars. Nos. 89 to 98 inclusive belong to A. T. Dallis; the aggregate principal due on said ten bonds is five thousand (5,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, one thousand (1,000) dollars; interest on coupons to Nov. 1, 1894, two hundred and eighty-nine and 60 / 100 (289.60) dollars. Making a total due on said ten bonds principal and interest to Nov. 1, 1894, (6,889) 60 / 100 dollars and making a total of principal due on the said ninety bonds upon which interest was not paid and accepted and the default waived of forty-five thousand (45,000) dollars, and total interest due up to November 1, 1894, seventeen thousand and five and 92 / 100 (17,005.92) dollars.

6. And it is further adjudged and decreed that the plaintiff do recover of and from the said Alabama and Georgia Manufacturing Company the said sum of forty-five thousand (45,000) dollars principal, and seventeen thousand and five and 92 / 100 (17,005.92) dollars for interest up to the 1st day of November, 1894, with all accruing interest on said principal from said date until paid, at 8 per cent. per annum and —— dollars as costs of this cause, the said sums to be satisfied out of the mortgaged premises hereinafter described, that is to say, "All of a large island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three (143) acres, more or less. Also Island No. 9, containing seven (7) acres, more or less. Also a small island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less. All of said three above-described islands being in the 20th district of Harris county, Georgia. Also all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above-described islands bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the seven (7) acre island, at a black gum, at or near a place known as Sell's Corner; thence in a straight line to a point where the land owned in 1868 by Mrs. Free-
509 man, Job Ross and James Campbell joins, known as the Ross and Freeman corner, to a pine stake; thence in a line to a branch near said stake, thence in a line down said branch to said river; thence down the western bank of said river to the beginning point, containing 65 and 23 / 100 (65.23) acres, more or less, lying and being in Chambers county, State of Alabama, and being part of section twenty-eight and section twenty-nine (28 and 29), township twenty-one (21), range twenty-nine (29), as well as a forty (40) for right of way from factory building to the public road leading from West Point, Georgia, to Berlin, Ala., at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now or hereafter owned or enjoyed by said Alabama and Georgia Manufacturing Company.

7. It is further ordered and decreed that the remainder of said

bonds, to wit: forty (40) in number, which are numbers as set out in paragraph 2 of this decree for the aggregate principal sum of twenty thousand (20,000) dollars and for the sum of three thousand, four hundred and fifty-one and 24/100 (3,451.24) dollars interest thereon to November 1, 1894, were not due at the time of the filing of this suit, and said plaintiff as trustee is not entitled to recover therefor.

8. That the equity of redemption in and to said mortgaged premises be and the same is hereby barred and forever foreclosed, so far as the rights of said defendant corporation, or anyone claiming under or through it, is concerned, since the date of the execution of said trust deed or mortgage, to wit: the 2nd day of January, 1884.

9. It is further adjudged and decreed that unless the said defendant shall pay into this court, within 30 days from this date, the said sums of money, to wit: forty-five thousand (45,000) dollars principal, and seventeen thousand and five and 92/100 (17,005.92) dollars interest, with all accruing interest, at 8 per cent., as in this decree adjudged to be due, together with the costs of this cause; then on failure to so pay in the same, Sam'l C. Dunlap, Esquire, who is hereby appointed commissioner of this court to advertise and offer the said property for sale, on the following terms and conditions:

Said commissioner will advertise said property once a week for four weeks in the Daily Constitution, newspaper published in the city of Atlanta, and in the Hamilton Journal, published in Hamilton, Harris county, Georgia, prior to the offering said property for sale, and on Tuesday, the 4 of June, 1895, at twelve o'clock m., he will offer the same for sale to the highest bidder before the court-house door in the town of Hamilton, Harris county, Georgia. Said commissioner will report to this court the name of the highest bidder, with the amount of his bid for confirmation or rejection. He shall require the person bidding off said property, should he be a person other than one representing a majority in amount of the outstanding bonds of the said company, to pay into the hands of the commissioner 10,000.00, ten thousand dollars, to insure com-
510 pliance with his bid, in case the sale is confirmed. Any bondholder may bid on said property, and in case it shall be bid off by any person for or on behalf of the holders of a majority of said bonds in amount, then such purchaser shall not be required to pay into the hands of the commissioner pending his report and confirmation or rejection any more than 5,000 dollars to cover costs, fees and expenses of sale.

10. And it is further adjudged and decreed that in case the holders of said bonds, or any of them, purchase said property, they shall be entitled on confirmation to pay the balance of the purchase-money in and with the bonds of said company, whether the same have matured or not, in the proportion and to the extent that such

bonds would be entitled to share in the proceeds of sale if all the purchase money was paid in cash.

11. It is further ordered and decreed that in case said defendant fails to pay into court the said sums hereby decreed to have matured at the time of the filing of the bill, within the time herein allowed, and in case the property is sold and the proceeds *is* brought into court for distribution, then and in that event the bonds hereby decreed not to have matured at the time of the filing of this bill, which bonds are described in paragraph 2 of this decree, are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the special master with all accruing interest and the holders and owners of said bonds may present them, with coupons attached, for their proper *pro rata* share of said proceeds according to their tenor and effect.

The court being of the opinion that the property decreed to be sold is indevisable and cannot be sold to satisfy that portion of the bonds which are hereby decreed to have matured, without destroying the value of the property as security for said bonds. And it further appearing that the defendant is insolvent and has ceased to do business; and it further appearing that the said bonds described in the 2 paragraph of this decree have become due since the filing of the bill by reason of non-payment of interest.

12. The rights of the purchaser of the said property at the sale heretofore made as to amount paid into court are reserved and subject to any other and further decree as to the court may seem meet and proper. The court also reserves the right to make any other and further decree in reference to the entries of credits on said bonds and the control of the same as shall appear to be proper on final distribution as well as to make any further decree in conformity with the general scope hereof as well as to make any order or decree adjusting the claim of defendants for costs in the court of appeals.

13. It is further ordered and decreed that for any balance of said sums hereby adjudged to be due, which may remain unsatisfied after the sale of said property the said plaintiff may have execution therefor against said defendants.

In open court, March 30, 1895.

WM. T. NEWMAN,
U. S. Judge.

511 Filed in clerk's office 1 day of April, 1895.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

The commissioner named in the foregoing decree having failed to advertise the property described in the decree for sale of the first Tuesday in June, 1895, for want of time, it is now ordered and decreed that this decree be amended so that the commissioner, Sam'l C. Dunlap Esq., be and he is hereby ordered and directed to offer said property for sale on the first Tuesday in July, 1895, after due

advertisement as in said decree provided, instead of the first Tuesday in June, 1895.

In open court this 27 May, 1895.

WM. T. NEWMAN,
U. S. Judge.

as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the fifth circuit by virtue of an appeal sued out by the said Alabama and Georgia Manufacturing Company and others agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before said United States circuit court of appeals, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed.

It is further decreed that the appellants, and the surety on the appeal bond herein, J. B. Redwine, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

January 14th 1896.

Clerk's costs $33.10. $29.85 paid on account clerk's costs by W. T. Huguley. Att'y's docket fee $20.00.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal, notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of February, in the year of our Lord one thousand eight hundred and ninety-six.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Filing.—Filed in clerk's office 10th day of March, 1896.

O. C. FULLER, *Clerk.*

512 *Order Entering Mandate.*

In Circuit Court of U. S., Nor. Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } No. 360. In Equity.

Bill, etc. Final decree. Appeal. Mandate of affirmance.

This cause having been carried by appeal to the circuit court of appeals and the decree of this court having been affirmed, it is now, on motion of plaintiff,

Ordered that the mandate from said circuit court of appeals be entered on the minutes of this court in said cause stated, and that in accordance with the judgment of said court of appeals the said final decree of this court stand affirmed.

In open court March 10th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 10 day of March, 1896.

O. C. FULLER, *Clerk.*

Order Directing Sale.

U. S. Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MFG. COMPANY ET AL. } No. 360. In Equity.

A sale of the property embraced in the final decree in this case having been prevented by an appeal of the cause to the circuit court, said appeal having been disposed of and affirmed:

It is now ordered that Samuel C. Dunlap, Esq., be and he is hereby ordered and directed to offer said property for sale on Tuesday, the 5th day of May, 1896, after due advertisement as in said decree provided and on the terms therein specified.

In open court, March 10, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 10 day of March, 1896.

O. C. FULLER, *Clerk.*

513 *Amendment to Petition of Alabama & Georgia Mfg. Co. et al.*

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON ET AL.
vs.
THE ALABAMA & GEORGIA MANUFACTURING Co. and William T. Huguely. } In Equity. No. 539.

To the honorable the circuit court of the United States for the northern district of Georgia:

The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, each a corporation under the laws of the State of Georgia, amend their petition heretofore filed in the above-entitled cause on the 10th day of July, 1893, by leave of the court first had and obtained, reaffirming the allegations contained in said original petition, and your petitioners further show to the court, that since the date of the filing of said petition the purchasers of said property have still retained the possession of the same, and still remain in the possession of the same, and that the sole authority under which they have held and still hold the same is the decree which was reversed and of the sale made thereunder. Your petitioners aver that the rents and profits of said property, ever since it has been in the possession of the present holders of the same have amounted to at least fifty thousand dollars a year, and is far in excess of the amount now due on said mortgage, both of principal and interest.

Your petitioners further aver that the holders of the original bonds of the Huguley Manufacturing Company, under which this foreclosure was had, were the organizers of the present corporation, The Galeton Cotton Mills, except Mrs. Sallie H. Huguley, who was the owner of six thousand dollars of the bonds, and J. Janopoulo, who was the owner of one thousand dollars of the same. All the rest of said bondholders became the purchasers of said property under the reorganization.

Your petitioners, and especially The Huguley Manufacturing Company renew its prayer for an accounting to be taken of said rents and profits of said property of said mill, and that the said purchasers of the same, who were the holders of the bonds, as aforesaid, be held to account for the same, and that the court pass an order for the impounding of the records of the sale of said property, so that the same shall remain under the control of the court until the question of the value of the said rents and profits shall be determined by the court, and for such other or further relief as your petitioners may be entitled to in the premises.

——— ———,
Petitioners' Attorneys.

514 UNITED STATES OF AMERICA,
Northern District of Georgia.

In person came before the undersigned, William T. Huguley, one of the foregoing petitioners, and representing the other two, and says on oath, that the statements contained in the foregoing amended petition are true, of his own knowledge, and he has read over the allegations of fact contained in the original petition to which this is an amendment, and that the facts alleged to be true in said petition are true, of deponent's own knowledge. Deponent has made a very careful estimate of the rents and profits, and he is prepared to state positively that the estimate of fifty thousand dollars a year is a very conservative estimate. Deponent means to state that the rents and profits should be that amount under proper management.

Deponent is abundantly prepared by evidence to substantiate the value of said rents and profits, and to show to the court that the same should be at least fifty thousand dollars a year.

WM. T. HUGULEY.

Sworn to and subscribed before me, this ninth day of March, 1896.

GEO. S. BARNARD,
Deputy Clerk U. S. Dist. Court.

Filing.—Filed in clerk's office 10th day of March, 1896.

O. C. FULLER, *Clerk.*

Order of Reference to Special Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Bill to Foreclose Mortgage.

It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of or-

dinary wear and tear, and as to the liability of the holders of the property therefor.

This March 16th, 1896.

WM. T. NEWMAN,
U. S. Judge.

515 *Petition to Postpone Sale and Modify Decree.*

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA AND GEORGIA MANUFACTURING Company, Huguley Manufacturing Company, and W. T. Huguley. } In Equity. No. 539.

Petition of defendants for rents, issues, and profits.

Petitioners represent to the court that since the reference of the above matter to the special master, they have used all possible diligence to speed the hearing, and have made considerable progress, but have been unable to conclude the cause. It will undoubtedly take sixty days longer to bring the matter to a final determination and report from the master. Thirty days more will hardly suffice. It is important that a report be made before the sale of the property, which is to come off, as at present ordered and advertised, on the first Tuesday in the present month, because petitioners claim, and with good reason under the evidence so far adduced, that their demand is more than sufficient to cancel the mortgage indebtedness. They have shown a strong *prima facie* case to that effect. They have shown by O. B. Tilton, the superintendent of the Exposition cotton mills in this city, that he has made a thorough examination of this mill, in minute details within the last month, and that in his opinion, its earning capacity, in September, 1892, and from then on until the present time, — it was at that time in good repair, and everything in first-class condition, should not have been less than one hundred and twenty-five dollars per day, and that there are three hundred and twelve working days in the year. He says the mill has not been kept in repair for three and a half years, and is in miserable condition, and not making more than half what it should make. He made a thorough and complete inventory of all the machinery and buildings, and said no signs whatever appeared of any repairs having been made in three and a half years. He testifies that there has been more than $25,000.00 damage to the property by the water coming in on the machinery, and by its having been badly cared for. He says that if the mill and machinery, as he saw it, had been in good condition and thorough repair three and a half years ago, with a tight roof, it could have been kept so, and

in addition could have earned at least $125.00 per day. He submitted careful estimates based upon close and thorough calculations, showing this would be true. He is a thorough mill expert. He has been in the business for twenty years, and went to this property at the request of Mr. Huguley, and with the permission of the president of the Exposition cotton mills, and gave it a very thorough and careful examination.

Petitioners also showed by the testimony of W. T. Huguley,
516 that this mill had been placed in thorough repair, and was so when turned over to the present purchasers and holders. The Huguley Manufacturing Company had been in possession of it for twenty-seven months, and had expended $26,000.00 in repairs and findings, and had placed the mill, machinery and the entire property, in first-class condition, and it was so when it was turned over to the bondholders' committee who afterwards organized as the Galeton cotton mills, in September, 1892. He testified that the roof was in good, water-tight condition. His testimony was very full and thorough on these points. He went into the matter in thorough detail. He was on the stand many days, and the majority of the time was consumed in cross-examination. The testimony showed the roof at the present time to be in a wretched condition, and full of great holes all over it, so that the water came down in large quantities, making it necessary that tarpaulins should be stretched over the machinery in order to preserve it at all. This condition of the roof was shown by several of the witnesses, including Tilton and Huguley. The evidence of Tilton shows clearly that the principal damage to the machinery was caused by water and the rust consequent therefrom.

The claim of petitioners has been fully made out by the evidence so far, to the extent of more than one hundred thousand dollars. The mill property has been shown by the evidence to be very valuable. M. B. Torbett, who testified that he was an insurance expert, was introduced and showed that he carried a line of insurance on this property amounting to two hundred thousand dollars, and that it was placed by him after a careful survey of the property, and was accepted by the insurance experts of the companies he represented, after they had also examined and surveyed the property. This insurance was carried by him in the year, 1892.

Your petitioner represents that this valuable property is about to be sacrificed by sale to come off on next Tuesday, under a proceeding in favor of bondholders, who have held possession of it for more than three years and a half, and who are undoubtedly accountable to petitioners for what this property earned, or should have earned, during said period. Petitioners expect to show by other evidence, which they have not yet had an opportunity to bring before the master, but which they expect to produce on Thursday, the seventh day of May, to which time the hearing has been adjourned, from witnesses living at or near the mill, and who have been thoroughly familiar with its condition all this time, that it was in a first-class

condition, in thorough repair in September, 1892, when turned over to the bondholders who were purchasers at the sale.

Premises considered, your petitioners pray that the sale of said property be postponed for at least sixty days in order that the master can have time to make up his report, and file the same touching the amount of your petitioners' claim as aforesaid.

Your petitioners further pray that the court pass such order, and render such supplemental decree as may be necessary and proper for the protection of the rights of petitioners in the premises, and that the court order and direct the impounding of the pro-
517 ceeds of such sale, and that the same shall be held subject to the claim of your petitioners and until the same shall be finally determined by the court, and that when so determined the same shall be paid to your petitioners out of the proceeds of such sale.

And your petitioners further pray for such further or other relief as they may be entitled to in the premises according to the nature and circumstances of this case. And your petitioners will ever pray, &c.

JOHN M. CHILTON,
BIGBY, REED & BERRY,
ALLEN FORT,
W. R. HAMMOND,
Attorneys for Petitioners.

UNITED STATES OF AMERICA,
Northern District of Georgia, County of Fulton.

In person came before the undersigned, William T. Huguley, who after being duly sworn, deposes and says, that all the facts stated in the foregoing petition are true of deponent's own knowledge. Also came William R. Hammond, of counsel for petitioners, who after being duly sworn, deposes and says, that the facts stated in the foregoing petition so far as they relate to the evidence already taken before the master are true of deponent's own knowledge, that is the testimony has been taken to the effect as stated therein, and the conclusion stated therein, as to the amount of the recovery that would be fully justified under the evidence already adduced, is correct, in the opinion of deponent. Deponent further says that he has conducted the examination of witnesses under said petition and order of reference before the master, and has given careful attention to same, and gives the foregoing opinion as the deliberate result of his judgment after hearing said evidence, up to the present time, and he says further that he has used all diligence possible, under the circumstances in which he had been placed, for the speeding of the hearing before the master. Deponent was compelled by providential cause to leave the city of Atlanta on Saturday at noon for a distant part of the country, and could not return before Wednesday afternoon of the present week, and the preparation of this petition,

and the further hearing of evidence during that interval was necessarily prevented, as deponent was the only counsel who had been present during the entire time of the conduct of said case before the master, and who was in position, for that reason, to properly present this petition before the court. Deponent further states that in his opinion, the ends of justice can only be met by a postponement of said sale for at least sixty days.

W. T. HUGULEY.
W. R. HAMMOND.

Sworn to and subscribed before me, this May 1st, 1896.

J. A. HYNDS,
Notary Public, Fulton County, Ga

518 *Order.*

On considering the foregoing petition, it is ordered that the same be heard before me on the 2nd day of May, 1896, at the hour of 10 in said court, and that a copy of said petition, and this order be served at once on counsel for complainants in said cause, and respondent in this petition.

WM. T. NEWMAN,
U. S. Judge.

Service: I acknowledge service of a copy of the within petition and order. This 3 p. m., May 1st, 1896.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Galeton Cotton Mills et al.

Order Denying Application.

It is ordered that this application be denied, without prejudice to the rights of the petitioners to full protection of any and all rights they or either of them may have at any time before the final confirmation of the sale, the court hereby reserving the right and power to pass such orders, in the premises as may be necessary or proper for that purpose.

In open court May 2nd, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 2nd day of May, 1896.

O. C. FULLER, *Clerk*,
By GEO. S. BARNARD, *Deputy.*

Commissioner's Report of Sale.

Decree from the circuit court of the United States for the northern district of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. ET AL. } No. 360.

To the honorable the circuit court of the United States for the northern district of Georgia:

As commissioner appointed by said court to sell the property of the defendant in the above-stated case, I beg leave to make the following report:

I advertised the property described in said decree once a week for four weeks in the Daily Constitution, a newspaper published in Atlanta, and in the Hamilton Journal, a newspaper published in Hamilton, in Harris county, Georgia, prior to offering said property for sale. And on the first Tuesday in May, 1896, I sold said
519 property at public outcry before the court-house door in the town of Hamilton, in Harris county, in said district, it being the county in which said property is located. When the same was bid off by L. Lanier, representing a majority of the bondholders of said defendant company, at and for the sum of $66,000.00. The said purchaser paid over to me at the time and place of the sale the sum of five thousand dollars, as required by the terms of the decree for which he holds my receipt.

The cost for advertising the property in the Atlanta Constitution amounted to $25.00, and in the Hamilton Journal to $21.97, making a total of $46.97. My fee for selling the property by contract is $200.00, making a total expense of $246.97, which amounts I have paid, leaving in my hands subject to the order of court the balance, to wit, amount collected from sale $5,000.00, total expense of sale $246.97, amount on hand $4,753.03, amount in hands of purchaser uncollected, $61,000.00.

I attach hereto a copy of the advertisement and the bills for advertising same which I have paid.

All of which is respectfully submitted.

May 7th, 1896.

SAMUEL C. DUNLAP,
Commissioner.

Filing.—Filed in office May 7th, 1896.

O. C. FULLER, *Clerk.*

Petition of Purchaser for Confirmation of Sale.

United States Circuit Court, Northern District of Georgia.

Final Decree.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } No. 360. In Equity.

To the judges of said circuit court:

The petition of L. Lanier shows that the property described in said decree was exposed to sale on the first Tuesday in May, 1896, before the court-house door in the town of Hamilton, Ga., by Sam'l C. Dunlap, commissioner, appointed for that purpose, after due advertisement in conformity with said decree. That your petitioner for and on behalf of the holders of the bonds of the Alabama & Georgia Manufacturing Company bid off said property at and for the sum of 66,000 dollars. That he paid into the hands of said commissioner on the spot the sum of 5,000 dollars, as in said decree provided for. Petitioner is ready to surrender the bonds of said company in payment of the balance of the purchase-money on confirmation of the sale, all of the bonds being legally or equitably the property of your petitioner and his associates and under their control.

520 Wherefore your petitioner prays that defendants show cause why said sale should not in all respects be confirmed and the commissioner be directed to make deed to the property. And your petitioner will ever pray, &c.

L. LANIER,
By DORSEY, BREWSTER & HOWELL AND
B. F. ABBOTT, *Solicitors.*

Order: It is ordered that defendants show cause before me on Saturday, the 30th instant, why the prayer of the foregoing petition should not be granted. Let service on defendants be perfected by serving counsel of record in the case.

This May 27th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service of the above and foregoing petition and order acknowledged. Copy waived. This May 27th, 1896.

W. R. HAMMOND,
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Solicitors for Defendants.

Filed in clerk's office 27th day of May, 1896.

O. C. FULLER, *Clerk.*

Answer to Petition for Confirmation of Sale.

In United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee, &c.,
vs.
ALABAMA & GEORGIA MANUFACTURING Co. *et al.* } No. 360. In Equity.

Answer of the Huguley Manufacturing Co. Petition of L. Lanier *et al.* for order of confirmation.

In response to the rule to show cause why said sale should not be confirmed, this respondent, for cause why said sale should not be confirmed, shows as follows:

This respondent is the real owner of said property, and the real party in interest as defendant in the foreclosure proceedings. The foreclosure proceedings deprived this respondent of the power to raise the money to pay off the bonded indebtedness, and it has been totally unable to do so ever since the litigation has commenced. Respondent has a good and valid claim against the bondholders, who were the purchasers at the original sale, for the rents and profits of said property, for over three and two-third- years, which amounts to one hundred and fifty thousand dollars, or a larger sum.

521 When the mandate in the circuit court of appeals was filed in the clerk's office at this court, this respondent moved at once to have an inquiry made before a master as to the amount of this respondent's said claim. This court appointed a special master on respondent's said application, to hear evidence on this question and report to this court the amount of respondent's claim. At the same time this court ordered a sale of said property on the first Tuesday in May, 1896, under a decree of foreclosure. In the meantime this respondent did all in its power to press to a final hearing and determination the question so referred to the special master, but was unable for various causes, and without any fault on the part of respondent, to get the matter finally disposed of before the day of sale had arrived. The respondent had proceeded far enough to make it certain that it was entitled to recover a very large amount of money out of the said petitioners, who were the purchasers and holders of said property under the former decree. Respondent states to the court that the evidence already introduced before the special master would authorize and require a finding of over thirty-five thousand dollars a year, as the amount that should have been earned by said petitioners out of said property, during the period of time they held it, which was over three and two-third- years. Re-

spondent further states to the court that the evidence already introduced before the special master would fully justify recovery of more than twenty-five thousand dollars for damage done to said property on account of repairs and keeping up the same.

Respondent has shown that the roof was tight, and the machinery and property all in good repair, when said property was turned over to said purchasers under the first decree, and that now the roof is full of large holes, and the water pours down over the machinery, so much so that the purchasers have tried to protect it by spreading numerous tarpaulins over it, and that the machinery, and especially the cards, have all been damaged from this and other causes, which could have been prevented by the exercise of ordinary diligence on the part of the petitioners.

These facts have been shown by numerous witnesses, who have been sworn, and testified before the special master, and especially by the testimony of O. B. Tilton, superintendent of the Exposition cotton mills, of Atlanta, Ga.; Logan Owen, superintendent of the Bibb Manufacturing Co., of Macon, Ga.; John H. Nolan, J. T. Frazier and J. H. Jones.

Respondent here produces to the court the testimony of these witnesses, certified by the special master, showing that this respondent has a very large and substantial claim against said petitioners, and submits on the same, and asks this court to consider the same in determining the rights of this respondent herein.

Respondent represents to the court that there was only one bid made at said sale, and the property brought a price far below its real value. Respondent desired to bid at said sale, but was unable to do so because it had no money or property of any kind excepting said property, and was wholly without means to do so. But respondent can and will bid on said property when its said claim against
522 the said petitioners shall be fixed and determined, because it will then be able to do so, because its claim is very large and substantial one, and this court will doubtless give it the right to bid on the basis of said claim, and only require it to pay the excess, if any, should it become a successful bidder at said sale.

Said property is worth, at a low estimate, two hundred thousand dollars, as respondent is abundantly able to show, and respondent asks the court to allow it to offer proof to that effect. It sold for less than one-third that amount.

If the court will set aside this sale, and allow respondent'- said claim to be determined before said property shall be sold again, this respondent will purchase said property if it has to pay two hundred thousand dollars for the same. It is a very valuable property, and respondent has a very large and valuable claim against it, and it only asks to be allowed to come into fair competition, in bidding for the property, with the bondholders, who have had possession of the mortgaged property for over three and two-third- years.

Respondent respectfully submits to the court that while its claim is being determined by the special master appointed by this court,

and until the amount due to it by the mortgages shall be determined, especially since the cause has progressed far enough to show that respondent's claim is so large and valuable, that there should be no confirmation of the sale that has been made, and that the same should be set aside, and respondent's claim ascertained and fixed before the final sale of said property.

Respondent therefore prays that the sale be not confirmed, but be set aside.

If the court should refuse this prayer, then respondent prays that the sale shall be confirmed only on condition that the said purchasers shall be required to pay into this court the full purchase price bid by them for said property or so much thereof as will be sufficient to satisfy respondent's claim as hereinbefore set forth, when the same shall be finally ascertained and adjudicated by this court, and that the court incorporate in the decree of confirmation, if it shall confirm said sale, an order or provision to the effect, if the said purchasers should fail to pay into court such amount as may hereafter be determined by this court to be due to respondents under said proceedings now being had before the special master, that said sale shall be set aside and said property resold, or such other order, direction and decree be given by this court in reference to the same, as to justice shall appertain.

J. M. CHILTON,
W. R. HAMMOND,
BIGBY, REED & BERRY,
ALLEN FORT,
Solicitors for Respondent.

UNITED STATES OF AMERICA,
State of Georgia, Fulton County.

In person came before the undersigned, William T. Huguley, who being sworn, says, that he is the principal stockholder of The
523 Huguley Manufacturing Company, this respondent, owning more than 50 per cent. of said stock, and that the last president of said company, D. Jannopoulo, lives in the State of Missouri, and is inaccessible to respondent, and refuses and fails to co-operate with respondent in the conduct of said cause, having only a very small interest in the same; and deponent says the facts stated in the foregoing answer are true of deponent's own knowledge.

WM. T. HUGULEY.

Sworn to and subscribed before me this 25th of June, 1896.
GEO. S. BARNARD,
Deputy Clerk, U. S. Circuit Court.

Filing.—Filed in clerk's office June 25th, 1896.
O. C. FULLER, *Clerk*,
By GEO. S. BARNARD,
Deputy Clerk.

Decree Confirming Sale.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, &c.,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY *et al.*
No. 360. In Equity.

This cause comes on further to be heard on the report of sale made by Samuel Dunlap, Esq., the commissioner appointed by the court to make sale of the property described in the final decree, and upon the petition of L. Lanier, trustee, etc., praying a confirmation of said sale, and upon the objections of the Huguley Manufacturing Company, filed to said last-named petition and the evidence cited therein. Upon consideration, it is ordered, adjudged and decreed:

1. That said objections of the Huguley Manufacturing Company be, and the same are, hereby overruled.

2. It appearing to the court from the report of said commissioner, and from the petition of said Lanier, that said property was exposed for sale at the time and place specified in the decree at public outcry, and it further appearing that the provisions and directions of said decree were in all respects complied with, and that the property was knocked down to L. Lanier, trustee, for the holders of the bonds of the Alabama & Georgia Manufacturing Company, at and for the sum of $66,000.00, that being the highest and best bid therefor.

It is ordered, adjudged and decreed that said sale be, and the same is, hereby confirmed in all respects, and that said Samuel C. Dunlap, as such commissioner, be and he is hereby authorized and directed to convey to said purchasers named, all and singular the property and the property rights of every description de-
524 scribed — said decree, upon the purchasers complying with the terms of said sale.

And it appearing that the amount for principal and interest due on the bonds of said company is largely in excess of the amount of said bid of $66,000.00, the proper application of credits on said bonds arising from the proceeds of said sale, including cash paid into the hands of said commissioner, is reserved for further adjudication and direction in the cause.

It is further decreed that all questions of costs, expenses and counsel fees arising in the course of the litigation be likewise reserved for future action and decision of the court.

3. An order of reference having heretofore been entered in this cause directing Thomas B. Felder, Esq., to ascertain and report to

the court certain claims for rents, profits, wastes and conversions i respect to the said property, and said investigation now being i progress before said special master it is ordered, adjudged and de creed, that should the said accounting finally result in a judgmen in favor of the Huguley Manufacturing Company, then such judg ment, for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceedings shall for such excess be and remain a lien upon said property in favor of the Huguley Manufacturing Company, as against the purchasers at said sale or any persons holding under them.

And the court retains and reserves the right to seize and order a sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out, and the title shall be made by said commissioner to the purchaser subject to this provision.

This June 25th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 25th day of June, 1896.

O. C. FULLER, *Clerk.*

Report of Special Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Bill to foreclose mortgage.

To the Honorable Wm. T. Newman, United States judge:

The undersigned, in pursuance of a decretal order of the circuit court of the United States for the northern district of Georgia, pronounced on the 16th day of March, in the year 1896, in a cause in chancery in the said court depending between J. J. Robinson,
525 trustees, *vs.* The Alabama & Georgia Manufacturing Company *et al.*, and The Huguley Manufacturing Company, intervener, the original order being hereto annexed, having given due notice to the parties concerned, as will appear by the notice herewith returned, proceeded on the 30th day of March, 1896, to execute the said order; and the proceedings having been thenceforward regularly adjourned from time to time, and being at length completed the result is herewith respectfully submitted.

The undersigned, in taking an accounting of the proper receipts and disbursements incident to the custody and operation of the

mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor, found it necessary to have numerous sittings, covering a period of about sixteen months, the argument of counsel alone consuming about a week, and the oral testimony, as written out by the stenographer, making some eighteen hundred pages of closely written matter, and a large amount of books, documents and papers being introduced by the respective parties.

Since the completion of the argument in the cause, the undersigned has devoted about two months to a careful examination of the evidence, both oral and documentary, and consideration of the questions of law involved.

During the progress of the cause, learned counsel on both sides, raised numerous objections to the admissibility of testimony and invoked at the hands of the undersigned numerous rulings, and while the undersigned is persuaded that some errors have been committed by him, he is equally persuaded that these were not upon the controlling issues of the case.

Matters to be determined.

Under the said order of reference the matters to be determined by the undersigned are:

(1.) Whether there has been any waste or damage to the property, and whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor.

(2.) Whether there has been any conversion of the property connected with said property, and the amount and value of the same.

(3.) The proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale.

The Galeton cotton mills, having obtained possession of the property under an erroneous decree of foreclosure, which decree was appealed from and reversed, the main issue between the parties is as to the rule of liability which should be applied under these
526 circumstances. In the opinion of the undersigned, the Galeton cotton mills, being a creditor in possession under an erroneous decree of foreclosure, is chargeable only with the profits actually

earned, or those which would have been earned, but for its own wilful default.

See 78 Ga. 597.
1 Ala. Rep. 496.
Pomeroy's Eq. Jurisprudence, secs. 1216 and '17.
Snell's Equity, page 308.
Coot on Mortgages, 18th Law Library, top page 152, marg. 305.
11 Jones on Mortgages, 1123.
26 Gratton 61.
78 New York, 556.
English Notes to Thornburg *vs.* Baker, 2nd White & Tudor Leading Cases, part second, 1979, top 1077.

No wilful default.

The evidence does not show that the Galeton cotton mills has been guilty of any wilful default in the management of the property or in earning profits, but on the contrary shows that the company has made the most that could be made out of the property in the condition it was in when they received it.

Roof.

(1.) In regard to the waste and damage alleged to have occurred to the property during its illegal custody by the Galeton cotton mills, the movant introduced a large amount of evidence about the failure to repair the roof of the mill building, and tending to show neglect in keeping up the main dam which formed the water power for the operation of the mill; and some evidence tending to show neglect as to specific parts of the machinery used in the mill. In addition to hearing evidence from both sides on these points, the undersigned personally inspected the premises with the consent of all parties. In regard to the roof, the evidence shows that it was somewhat leaky at the time the property went into the possession of the Galeton cotton mills. The roof being old and of improper construction, it was hardly practicable to efficiently repair it, but what was really needed was an entirely new roof, which would require the outlay of a considerable sum of money. It cannot well be contended that a creditor in possession under the circumstances shown in this case, is under the duty of making expensive improvement-permanent in their nature which would ultimately inure to the benefit of the debtor. The evidence shows further that the Galeton cotton mills used the temporary device of protecting the machinery from the water trickling through the roof, by spreading tarpaulins over the machinery, this device having previously been used by the Huguley Manufacturing Company. While the evidence indicates that during the incumbency of the Galeton cotton mills the condition of the roof was somewhat worse, it does not show that this

interferred with the operation of the mill, or that it damaged
527 the machinery to any special extent, the movant having totally failed to adduce evidence establishing any specific amount of damage from this cause. The undersigned is further of the opinion that the dilapidated condition of the roof resulted from ordinary wear and tear only.

Floor.

Complaint is made by the movant that the Galeton cotton mills failed to properly care for the floor of the building, allowing the floor in the main building, which had sagged in the center, to remain in that condition and the machinery thereby to be out of level, and that the boards forming the floor had been abused and become much worn in places, and that the repairs needed in this respect had not been made. The evidence shows that the sagging of the floors in the main building had occurred some time before the Galeton cotton mills took possession, and an effort had been made to level it by jacking it up, but owing to the danger of spreading the walls it had not been brought up quite level, but the machinery itself was levelled up. It is, perhaps, true, that the floor became somewhat more depressed in the center after the Galeton cotton mills took possession, but it is not shown that this defect could have been remedied or that the failure to remedy it was wilful neglect on the part of the Galeton cotton mills, or that the defect damaged the machinery or interferred with its operation to any appreciable extent. The same may be said of the alleged failure to put in new boards where the old ones had become worn. These things are properly attributable to ordinary wear and tear, and not to negligence or abuse, and the evidence does not furnish any ground for any finding against the Galeton cotton mills on account of any defect in the floors.

Dam.

In regard to alleged neglect in reference to keeping up the dam, the conclusion of the undersigned is that the dam, during the occupancy of the Galeton cotton mills, was in about the same condition as it had previously been, and that the Galeton cotton mills is not chargeable with any wilful neglect in keeping it up or repairing it. If there was any depreciation in *in* the efficiency of the dam, it was small and attributable to ordinary wear and tear.

Machinery.

The movant claimed that the Galeton cotton mills had been guilty of improper care with respect to the machinery, and that among other things, certain of the machines had been robbed of their parts to supply missing or defective parts on other machines. The evidence on this point, as well as the others, was conflicting, but the undersigned is of the opinion that the practice of taking parts

from some of the older machinery to supply parts on other machines had commenced before the Galeton cotton mills went into possession, and further, that the machines thus deprived of their parts were old and practically worn out and incapable of being operated at a profit. Indeed all the machinery in the mill was shown to
528 have declined in value and its utility and productive power greatly reduced by reason of its advanced age.

A number of witnesses were examined as to the average life of cotton machinery, and while their estimates varied, it is safe to say that such machinery cannot be profitably operated, even when properly kept up and repaired, for more than fifteen or twenty years at the outside. This mill was constructed about the year 1869, and some of the machinery put in at that time is still there and in operation. Some of the older machinery has been displaced by reason of having ceased to be capable of running at a profit. As to about forty-five or fifty looms which had once been in operation, it was claimed by the movant that they had been dismantled and put off in the basemant of the mill, when the same should have been continued in operation; but the evidence on this point shows that these looms were taken out and replaced by new looms before the Galeton cotton mills took possession. There is no machinery in the mill of very recent date, the latest having been purchased in 1881 or 1882. In a word, the buildings, dams and machinery in this mill are all old, and like everything else material, have been unable to resist the empire of decay. Hence the undersigned says, that there has been no waste or damage to the property beyond ordinary wear and tear resulting from its use, covering a period of almost a quarter of a century.

Conversion of property.

(2.) The next question is " whether there has been any conversion of the property connected with said property, and the amount and value of the same." This, no doubt, refers to the claim made by the movant that certain movable property went into the possession of the Galeton cotton mills, and was used or converted by it, which property was not included in the decree of foreclosure, or the sale, but belonged to the movant. The evidence shows that there was in the office and in the mill a quantity of supplies and findings belonging to the Huguley Manufacturing Company, which were there for the purpose of being used as needed in the operation of the mill, but which had never been called into requisition. There is no dispute that these supplies and findings were used up by the Galeton cotton mills in its operation of the mill during the period of accounting. Their value is shown to be $2,500.00, and the movant is entitled to a finding for this amount, together with interest thereon from the date of said conversion, September 6th, 1892, at the rate of seven per cent. per annum, which amounts to $891.04.

The evidence does not show that any other property belonging to the Huguley Manufacturing Company was converted to the use of the respondent.

Receipts and Disbursements.

Interest on $16,600.

(3.) In regard to the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and
529 of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale, the evidence discloses that in the fiscal operation of the mill, interest was charged on the sum of $16,600.00, and that this charge was purely arbitrary; the owners of the Galeton cotton mills simply assuming that the same was worth the sum of $65,000.00, being the price bid at the sale of the property, plus $16,600.00. The interest thus charged is unauthorized, and the respondent is properly chargeable therewith. The total interest on this sum (not counting any compounding) is $4,773.42, with interest from April 30th, 1896, to date at the rate of 7 per cent. per annum, which amounts to $481.72, which sums undersigned allows in favor of the intervener.

Interest on bonded debt.

The evidence also discloses that respondent charged from time to time as a part of the expenses incurred in the operation of the mill interest on the mortgage debt amounting in the aggregate to $17,812.00. This charge is manifestly improper, because the movant was being charged and liable for interest at the contract rate on the bonded debt which was erroneously foreclosed on the property. To allow the charge of interest on the bonded debt made by the Galeton cotton mills, at the same time that the movant is held liable for interest on its bonded debt would be to require the movant to pay double interest, which would be unjust and illegal. Therefore, the movant is entitled to a finding in its favor on this ground for the amount of $17,812.00 with interest from April 30th, to date, at the rate of 7 per cent. per annum, which amounts to $1,797.48.

Sundry charges.

It appears from the testimony in the case that divers charges were made by the Galeton cotton mills on account of attorneys' fees, etc., as follows to wit:

Fees and expenses of Abbott, attorney	$554.65
L. M. Harris	2.00
Recording deed	5.25
Charter	10.00
Fees of clerk of the court of appeals	20.75
Lanier's expenses to New Orleans	29.65
Smith, stenographer	20.00

Legal fees as per account	25.00
J. W. Brown, expenses to mill	12.05
Robinson & Dukes, attorneys	50.00
Making in the aggregate the sum of	$729.35
And int. charged on same to Apr. 30th, '96	131.04
	$860.39

530 In the opinion of the undersigned these are not the proper charges and movant is entitled to a finding in its favor on this ground, for the said sum of $860.39 principal, and interest from April 30th, 1896, to this date, at the rate of 7 % per annum, which amounts to $86.77. See schedule.

Expenses of directors.

It further appears from the evidence in the case that the expenses of the directors of the Galeton cotton mills, traveling from Boston to West Point, amounting in the aggregate to $732.85, *was* charged to the expense account. It is the opinion of the undersigned that so much of said account as was incurred by the treasurer in traveling to and from the mill which amounted to $366.42, was a proper charge, but that the remainder, to wit: $366.43, was not a proper charge and therefore movant is entitled to a finding on this score for the said sum of $366.43 principal, and the further sum of $24.62 interest charged on above sum to April 30/96, making $391.05, and 7 % interest thereon from Apr. 30th, 1896, to date, which amounts to $39.49.

Waste.

One of the contentions of the movant is that in this accounting respondent has failed to account for the total amount of waste produced by the mill during the period of time that they operated the same. The evidence discloses that the whole amount of the waste produced during the period in question was 532,282 pounds. Of this respondent accounted for 212,695, leaving unaccounted for 319,587. This at two cents per pound would make the sum of $6,391.74, which, in the opinion of the undersigned, justifies the finding in favor of movant and against respondent for said sum of $6,391.74. Interest is allowed on this sum at the rate of 7 % per annum from the 30th day of July, 1894, to date, this calculation being based on the average time the mill was operated by defendant; the amount of interest allowed being $1,461.58.

Insurance.

It appears that respondent kept the buildings, etc., insured, loss, if any, payable to the Galeton cotton mills, for the sum of $75,000 at the rate of one per cent. per annum. If the buildings had been

consumed by fire the proceeds thereof would not have inured in anywise to the benefit of the mortgagors. There seems to have been no contract wherein the Galeton cotton mills was authorized to take out this insurance and charge the cost of it to the movant. This being true, it is the opinion of the undersigned that respondent had no right to charge to operating expenses insurance premium, and I therefore find in favor of the movant against respondent on this ground the sum of $3,502.52 principal, and interest from the 30th day of April, 1896, at the rate of 7 % per annum, making $353.45.

See 2nd Jones on Mortgages, section 1135.

531 Interest on working capital.

When the respondent went into the possession of the mill it had no working capital, although a working capital was required. The amount so required was variously estimated by the witnesses; some placing it at $20,000, some at $25,000 and some at $30,000, and upwards. One of the witnesses stated that ten dollars per day interest on this account, being not only amply sufficient, but in his opinion excessive, respondent charged to operating expenses as interest on working capital for the period of time said mill was operated, $17,196.24.

The undersigned has caused to be made an abstract of the treasurer's account and interest calculated thereon, which shows that the interest on the amount of capital actually employed, amounts to $14,021.47. The difference between this sum and the sum charged is $3,174.77, and this amount the undersigned finds in favor of movant, besides interest at the rate of 7 % per annum from the 30th day of April, 1896, which amounts to $320.41.

Interest on datings.

Movant contended with much earnestness and some plausibility, that N. Boynton & Co., the sales agents of the Galeton cotton mills, in their course of dealing with the purchasers of the product of said mill pursued a plan known in commercial parlance as "datings," whereby goods were sold and delivered and the bills made to bear a date in the future, and that the mill was charged with interest on these datings exceeding the usual cash discount of 2 %, which amount of interest so charged against this mill amounted all together to $14,108.35. The undersigned is free to confess that in dealing with this phase of the case he was much perplexed. There was evidence to the effect that it was customary in this business to allow the interest on such datings in addition to the cash discount, whenever a purchaser availed himself of the privilege of paying cash, instead of taking advantage of the dating. Thus it will be seen that the selling agents did not receive the interest on these datings, but that it was a benefit by way of additional discount, accorded to purchasers

as an inducement to prompt settlement of their accounts. Indeed, the custom of the trade being to allow such interest, in addition to the cash discount, it became a part of the contract of sale so as to entitle the purchaser to the customary allowance of interest. Thus it would not be optional with the sales agents to grant or refuse interest discount after the dating had been allowed. And it was no doubt necessary to allow datings in order to effect sales in the face of competition. Probably it was also to the interest of the mill, not only in the way of meeting competition, but also in the advantage of making immediate delivery on future orders, thus saving storage and insurance on goods. In other words, the account sales rendered by N. Boynton & Company, containing these interest charges correctly represents the actual amounts realized by them for the mills from sales of goods, and in the absence of any evidence of wilful default in not realizing more on such sales, the Galeton cotton mills
532 cannot be charged with more than the amounts actually realized. There was some evidence to the effect that some of the datings were unusually long and that the interest allowed on datings was too high, but there was not enough of this evidence to show that these charges were improper under the rule which has been stated as determining the liability of the respondents to account to the movant. Therefore, the conclusion of the undersigned is, that the charges for interest on datings contained in the account sales by N. Boynton & Company are proper.

Commissions to selling agents.

It is further contended, on behalf of the movant, that as N. Boynton & Company were financially interested in the Galeton cotton mills, they had no right to handle the products of the mill and charge agents' commissions for their services. It was also claimed that their charges were excessive. In the opinion of the undersigned, it is not illegal for persons interested in the profit of a mill to act as selling agents and receive commissions for handling the product of the mill. As a general thing, supposing the agents to be honest, it would be better to have one who was interested in the business, as he would be more likely to attend to it properly and diligently. The evidence does not show that N. Boynton & Company have made improper or excessive charges by way of commissions on sales.

As regards the contention that the commissions charged were excessive, a careful examination of the evidence adduced on this point convinces the undersigned that the commissions charged for handling the products of the mill were not excessive, especially in view of the fact that N. Boynton & Company guaranteed the payment by their customers of all sums due, thereby entailing no loss upon the mill because of bad debts.

This being so, it is proper that the Galeton cotton mills in accounting to the movant should be allowed credit for the sums paid to N.

Boynton & Company as commissions on sales and the same is hereby allowed.

Alleged shortage on cotton.

It was further claimed by the movant that a large amount of cotton which should have been accounted for was not accounted for. It was sought to show this by a comparison of the total amount of cotton bought for the mill with the amount which the books show had been opened for the purpose of being manufactured. The evidence shows, however, that the Galeton cotton mills at times sold some of the cotton on hand, which presumably was not needed at the time and that the proceeds of these sales have been credited on the treasurer's accounts. While this claim does not seem to have been insisted on, it is enough to say that the evidence does not authorize any finding against the Galeton cotton mills for any such shortage.

533

Goods unsold.

It was further claimed by the movant that the item of goods on hand unsold, which appears as a charge against the Galeton cotton mills, was not as large as it should be, but that the value of these goods on hand was underestimated. The evidence does not support this contention, but the conclusion of the undersigned is, that the valuation of $33,737.28 put on these goods covers their market value at the time.

Charges for cotton.

It is also insisted by movant, that the charges for cotton purchased for the Galeton cotton mills were higher than the ruling market prices at the dates of purchase, and that the movant is entitled to a credit for the difference between the price paid for cotton and the price for which it could have been procured. On this point some of the witnesses testified that the Galeton cotton mills always paid the market prices. The cotton for this mill was purchased by W. C. & L. Lanier, who also did the buying for several other mills during the same period of time. Mr. Lanier testified that the cotton was charged to the Galeton cotton mills at the same prices as to the other mills, the same being the actual cost price of the cotton. He admitted that in a few occasional instances cotton was furnished to the mill "to be priced," but this was not the custom, and it was done in such comparatively few instances and comparatively small purchases that it does not appear that the mills sustained loss thereby to any appreciable degree. To support the alleged overcharge on cotton the widest latitude was allowed movant in the introduction of testimony and a number of witnesses were examined as to the average market prices of various grades of cotton in Atlanta, La Grange, Newman and West Point. In addition to this, the cotton books of several large firms in West Point, who dealt in cotton,

were introduced. It does not appear from this mass of testimony that the Galeton cotton mills have paid more for their cotton than it could have been produced for at the time it was bought. The movant undertakes to establish such an inference by a comparison of the prices paid with certain average prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, would be to show the date and amount of each purchase and the market price of cotton in West Point on those days. On the whole, the undersigned is of opinion that the claim of overcharge on cotton purchased by the Galeton cotton mills is not made out by the evidence, and therefore said claim is disallowed.

Prices of goods sold.

It was further claimed by the movant, that the products of the mill were sold at inadequate prices. This mill was engaged in the manufacture of cotton ducks, known as 7 oz., 8 oz., and 10 oz. duck respectively. The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and
534 seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the the Galeton cotton mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent, the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, and that the failure to realize the best price obtainable was by the willful default of the respondent. Neither of these propositions is shown by the evidence. While the evidence for the movant, in the shape in which it is presented, may suggest an inference that the goods sold for the account of the Galeton cotton mills ought to have brought better prices, still the evidence strongly indicates that the product of this mill was not equal in quality to those goods to which the market price applies. Furthermore, so long as the selling agents acted in good faith, and sold the products of the mill at fair prices, not necessarily the best prices, the movant would have no cause to complain. The undersigned is of the opinion, that the selling agents of this mill realized a good price for its products, and perhaps as good prices as could have been gotten under the circumstances, and therefore the finding must be against the claim of the movant that the prices realized for the goods produced by the mill were grossly insufficient.

Indeed, in regard to the claim of overvaluation of cotton bought, and undervaluation of goods sold, the undersigned thinks that the movant must stand by the actual results until he can show that those results are materially different from what they should have been, and that they were brought about intentionally or by negligence so gross as to amount to wilful default.

Stoppage of mill.

It is also suggested in behalf of the movant, that he is entitled to a finding for the amount of profit which would have been earned by operating the mill during a period of thirty days, estimated to have been lost by reason of broken pinions to the water wheels, and other causes. This claim is disallowed, because the undersigned is of the opinion that accidents happen in the best regulated mills and are more liable to occur and cause stoppage in machinery that is old and worn than in a new mill. Indeed, the respondent seems to have done as well as could have been expected with the machinery and equipment at its command.

Stoppage of certain machinery.

Complaint is also made of a loss of product by reason of the failure to keep the full complement of machinery in operation during the whole of the period of accounting. On this point the evidence is that some of the machinery, or what had been machinery, which went into the possession of the Galeton cotton mills, was not fit for use, but that all of it which could be run at a profit
535 and perhaps some that could not, was employed constantly for the purpose of getting out the full product of the mill, except that occasionally a spinning frame or some other piece of machinery would be stopped for repairs, a thing which the evidence shows happens in all mills, and with greater frequency in mills that use old and run-down machinery. Therefore this claim is disallowed.

Rulings.

During the progress of the investigation, a number of rulings were invoked on the admissibility of testimony, but it is not considered material or profitable to notice in detail all of these rulings. Doubtless some errors were committed, but none that would affect the result or make it different from what it is. To go into a discussion of all the details in the testimony and rulings of the court, would needlessly lengthen this report without any compensating advantage.

Books and vouchers.

It was shown to the satisfaction of the undersigned, that the books introduced by the respondent, to wit, a journal and ledger, purporting to be the books of the original entry of the Galeton cotton mills, were not such, but the same appeared to be copies. Yet all the original vouchers, from which, no doubt, the original books of entry were made up, were brought into the court and tendered along with the said books. These vouchers were submitted to the inspection of the adverse party as well as to the court.

In dealing with these lengthy and complex accounts, the undersigned has undertaken to pass on all of the disputed items and

clearly set forth the results of the evidence on these items. There are a great many items submitted in the accounts of the respondent about which no controversy arose, and for that reason no mention is made of them.

Summary.

The Galeton cotton mills show by their accounts, that during the three and two-third-years over which the accounting extends the net result of their operation of the mill is a loss of $4,654.60. To overcome this, however, there are items here found in favor of movant largely in excess of said sum. The following statement shows, in the opinion of the undersigned, the true state of the accounts, to wit:

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		Interest from April 30th, '96, to date, 7%
Interest charged on $16,600	$4,773.42	481.72
Coupons on mortgage bonds	17,812.00	1,797.48
Insurance	3,502.52	353.45
Excess interest on balances	3,174.77	320.41
Directors' expenses (schedules)	366.43	
Interest charged on same to Apr. 30, 1896	24.62	39.49
Sundry expenses (schedule)	729.35	
Interest charged on same to Apr. 30, 1896	131.04	86.77
	30,514.15	3,079.32
Deduct loss as shown by books, April 30th, 1896	4,654.60	469.72
	25,859.55	2,609.60
Interest from April 30, 1896	2,609.60	
	28,469.15	28,469.15
Property converted Sept. 6, 1892	2,500.00	
Interest to Oct. 9, 1897 at 7 %	891.04	
		3,391.04
Waste not accounted for, 319,587 lbs. at 2c.	6,391.74	
Interest from July 3, 1894, (average date) to Oct. 9/97 at 7 %	1,461.58	
		7,853.32
Total award, with interest at 7% to Oct. 9/97		$39,713.51

And the said sum of $39,713.51 is awarded in favor of movant against the Galeton cotton mills.

Conclusion.

The undersigned does not understand the order of reference as requiring him to make the application of the credits found in favor of the movant to the balance of the debt owing by the movant, which was left after the movant was credited with the price which the property brought at the last sale. Probably the parties will be able to agree as to the proper application of these credits on the decree, and in the event of their failing to do so, the same will be readily fixed by the court.

In conclusion the undersigned desires to say that in dealing with the voluminous and complicated matters of account, he found it necessary to invoke the aid of an impartial and disinterested expert accountant. The services of Mr. A. L. Waldo were secured, and the abstract of the treasurer's accounts prepared by him and verified by me is herewith submitted as a part of this report.

As a matter of simple justice to the accountant, it affords
537 the undersigned pleasure in stating the work was performed with great skill, unusual accuracy and marked ability.

Respectfully submitted.

THOS. B. FELDER, JR.,
Special Master.

This October 9th, 1897.

Filing.—Filed in clerk's office Nov. 2, 1897.

O. C. FULLER, *Clerk.*

Exceptions by Respondent to Report of Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Petition for accounting.

And now come the Galeton Cotton Mills and J. J. Robinson, trustee, and except to the report of the special master in the above-stated cause, and for ground of exception thereto, say:

First. Respondents say that the master erred as a matter of law in holding and deciding that respondents were not entitled to charge to operating expenses of the mill during the term by the above reference the money paid for premiums on fire-insurance policies, to wit, the sum of 3,502.52/100 dollars.

The undisputed evidence before the master shows that said sums

were duly paid on fire-insurance premiums, and respondents say that the master erred in finding and in deciding that said sum of 3,502.52/100 dollars principal, and 353.45/100 dollars interest on said principal were a valid charge in favor of the movants against said respondents.

Respondents say that the master should have found the said sum of 3,502.52/100 dollars, together with — dollars interest on the same as a valid and subsisting charge in favor of the respondents, as a part of the operating expenses of said mill during the time covered by said reference, and the failure to so find is error.

Second. Respondents say that the master erred as a matter of fact in finding, holding and deciding that movants were entitled to recover against respondents for 319,587 pounds of waste, at two cents a pound, making the sum of 6,391.74/100 dollars, with interest thereon, to wit, 1,461.58/100 dollars, to October 9th, 1897.

Movants aver that the evidence shows that respondents accounted for all of the waste which came into *his* hands during the time covered by said references:

(*a.*) The account sales of the selling agents of the Galeton cotton mills, N. Boynton & Co., in Boston, show that they sold 212,695 pounds of waste, as found by the master.

538 (*b.*) The evidence in case as shown by fortnightly reports of the Galeton cotton mills show sales of bagging which do not appear on the statement of sales by said sales agents, amounting to 1,651.04/100 dollars, which at 2 cts. per pound would amount to 82,552 pounds.

(*c.*) The evidence shows that there were purchased 1,006 bales of cotton during the time covered by the said reference. Respondents say that on each of said bales there were six pounds of ties, which ties were used in baling manufactured goods, and the total weight of said ties is 66,000 pounds.

(*d.*) The evidence shows that waste consists in part of sand, dust and moats, which are utterly worthless, and respondents allege that fully three per cent. of the weight of the cotton bought consisted of such sand, dust, moats and refuse stuff, which waste, in that respect alone, amounts to 150,000 pounds.

(*e.*) The evidence shows that there is loss in weight on cotton on the 11,006 bales of cotton purchased, according to average loss on cotton bought and used for such purposes, amounting to 55,000 pounds

Respondents allege that the master erred in holding and deciding that respondents had failed to account for 319,587 pounds of waste and in holding and deciding that the same was worth two cents a pound, and that it amounted to 6,391.74/100 dollars, and that the interest thereon to October 9th, 1897, was and is 1,461.58/100 dollars, and in deciding that said sums were a proper charge against respondents, and in not holding and deciding that respondent, The Galeton Cotton Mills had fully accounted for all the waste which came into its hands.

And movants say that the master erred in so finding and reporting said sums as a valid charge against respondents.

Third. Respondents say that the master erred as matter of fact in holding and deciding that movants were entitled to recover against this respondent, The Galeton Cotton Mills, for the property convertd since September 6th, 1892, the sum of 2,500 dollars, with interest thereon to October 9th, 1897, in the sum of 891.04/100.

Respondent- says that the evidence fails to disclose what said property was and that its value was of the sum so found. And respondents aver that the master erred in so finding, and in not reporting in favor of respondents on said issue.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, *Sol. for Respondents.*

Exceptions overruled. This Nov. 2nd, 1897.

THOS. B. FELDER, JR.,
Special Master.

Filing.—Filed in clerk's office Nov. 2, 1897.

O. C. FULLER, *Clerk.*

539 *Exceptions of Interveners to Report of Master.*

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL. } In Equity.

Exceptions by intervener to report of special master, Hon. Thomas B. Felder, Jr.

And now comes the intervener, The Huguley Manufacturing Company, having received notice from the special master, the Hon. T. B. Felder, of his report in said cause, and before the filing of said report, and excepts to the same and for cause of exception says that the special master erred:

1. In holding and ruling that the Galeton cotton mills, during the time of its occupancy and possession of the property in dispute was only chargeable with the profits actually earned, or which would have been earned but for its wilful default.

The contention on the part of intervener was and is, that the true rule of liability was, that the Galeton cotton mills was liable to intervener for such profits as would have been earned by the exercise of ordinary and reasonable diligence by the Galeton cotton mills.

2. In holding and ruling that the Galeton cotton mills, under the evidence introduced in the cause, was only liable for the profits actually earned by it, as shown by the evidence introduced on its own behalf; whereas, if the proper rule of diligence had been applied to the question of its liability, and the amount of same under the evidence in the cause, the finding of the special master would have been a much larger amount than it was, to wit: in addition to the sum of $39,713.51, already allowed, the further sum of $171,215.27, or a total sum of $210,928.78, would have been the finding of the master.

3. In holding and finding that the evidence shows that the Galeton cotton mills made the most that could have been made out of *the property in the condition* it was in when they received it.

4. In holding and finding that the amount of interest charged by the officers and agents of the Galeton cotton mills against the corporation, under the general charge of "balance interest on account," being $17,196.24, should only be reduced to $14,021.47, and allowing the last-named sum to stand as a charge against the Galeton cotton mills, in favor of their agent and treasurer, Horace S. Sears, and thus operate as charge against intervener in the accounting between it and the Galeton cotton mills; intervener claiming and contending that no evidence was furnished to the master on which he could allow the same, and that the only interest charged which could properly (be) allowed, was "interest on working capital," which the evidence showed would not exceed $30,000.00
540 principal, and that interest on this sum, at 7% per annum would only be $7,700.00 for the period of accounting. Intervener contends that an additional amount should have been allowed in its favor against the Galeton cotton mills, on this account of $6,321.47.

5. In holding and finding that the charges for interest on "datings," contained in the account of sales rendered by N. Boynton & Company to the Galeton cotton mills, to the amount, to wit, of $14,108.35, was a proper charge in favor of the Galeton cotton mills against the intervener.

Intervener contends that this amount so charged, should not have been allowed, or any part of it, and that the whole amount of it should have been added to the amount found in favor of intervener against the Galeton cotton mills.

6. In holding and finding that there was no excess of "commissions," charged by N. Boynton & Company, the sales agents of the Galeton cotton mills, on account of sales of duck and other product of the mills, said charge having been five (5%) on the gross sales, or $30,626.19 in the aggregate; whereas, intervener contends that no more than three and one-half (3½) per cent. should have been allowed as a credit to the Galeton cotton mills on account of such sales, or the gross sum of $21,438.33, which would make an additional amount of $9,187.86, which should have been found by

the special master in favor of intervener against the Galeton cotton mills.

7. In holding and finding that no amount should be allowed to the intervener against the Galeton cotton mills on account of "shortage on cotton," or the difference in the amount of cotton bought and paid for by the Galeton cotton mills, and the amount actually opened and consumed by the mills, as shown by their own books, said amount being as follows:

Actual pounds of cotton bought and paid for.....	5,408,341 lbs.
Actual pounds of cotton opened and consumed.....	5,283,028 lbs.
Difference unaccounted for.....	125,313 lbs.

Intervener contends that there was no evidence showing that this cotton was accounted for and that the special master should have found in its favor against said Galeton cotton mills the value of the same, at 8¼ cents per lb., or $10,338.32, in the aggregate.

8. In holding and finding that the valuation of $33,737.28, credited by the Galeton cotton mills for goods on hand at the end of the period of accounting, was a correct valuation, and that no additional charge should be made against the Galeton cotton mills in favor of intervener on this account. Intervener claims and contends that the evidence shows clearly that the market value of the stock on hand at the end of the period of accounting was as follows:

273,050 lbs. duck on hand Ap'l 30, 1896:

Of which, in Boston, 117,832 lbs., 12½ cts.....	$14,729.00
Of which, in West Point, 155,218 lbs., 12½ cts.....	19,402.25
Fr't prepaid to Boston on former lot.....	707.00
541 Additional value on converted goods.....	850.00
Goods at mill, unbaled, 1,691 lbs., at 12½ cts.....	211.37
Cotton at mill, in process, 10,000 lbs., 12½ cts.....	1,250.00
Other stock, waste, &c., 24,207 lbs., 2 cts.....	484.14
Total net value as per testimony.....	$37,633.76
Deduct valuation as per defendant's estimate.....	33,737.28
Leaving a balance on this account of.....	$3,896.48

which should have been charged in favor of intervener against the Galeton cotton mills in addition to the amount allowed of $33,737.28.

9. Intervener claims and contends that the special master erred in refusing and failing to find the amount of $3,000.00, with interest, in favor of intervener against his defendant, which was shown by the evidence to be the value of the "belting" on hand at the close of the period of accounting, which belting, was shown by the evidence, to have been converted to its own use by the Galeton cot-

ton mills; and further in failing and refusing to find in favor of the intervener and against the Galeton cotton mills, the sum of $658.25, with interest, being the value of the supplies and findings admitted by the defendants to have been on hand at the close of the period of accounting, as shown by the evidence.

10. In holding and finding that no amount should be allowed in favor of the intervener against the Galeton cotton mills on account of "overcharge on cotton," bought and charged against the Galeton cotton mills by W. C. & L. Lanier. Intervener claims and contends that the prices paid for cotton by the Galeton cotton mills were largely in excess of the market prices of cotton in West Point, as shown by the evidence; and this excess, for the period of accounting, amounted to the sum of $50,359.52, which amount should have been found in favor of intervener against the Galeton cotton mills. Under this head intervener makes the following specific claims:

(*a*.) The overcharge on 610,507 lbs. of cotton, from January 9 to May 4, 1893, was one and four-tenths cents per pound, making $8,547.09, which have been found in favor of intervener against the Galeton cotton mills; (*b*) the overcharge on 219,085 lbs. of cotton purchased during the month of June, 1893, was 1.476 cents per lb., or $3,233.69; which should have been found in favor of intervener against the Galeton cotton mills., etc.

Intervener does not confine its claim to these two specifications, but claims and contends that the evidence shows an overcharge for the whole period of accounting, as shown by the difference in the market prices of cotton, and the prices at which it was charged against the Galeton cotton mills, of $50,359.52, as stated above.

10 (*a*). In holding and finding that the intervener should have shown to the master the amount and date of each purchase made by the Galeton cotton mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively
542 within the knowledge of the Galeton cotton mills and its officers and agents to show the amount and date of each of these purchases, and when intervener had shown the dates when they were charged, and had shown, by abundant evidence, the market prices on those days.

Intervener claims and contends that it was not incumbent on it to show the dates and amounts of cotton bought by the agents of the Galeton cotton mills for the mills, but that this duty rested upon the defendents, and that no proof having been offered by the defendant- to show the dates and amounts of each of those purchases, the master should have taken the market prices at the dates when the cotton was charged on the cotton books of the Galeton cotton mills, and which were in evidence and charge the difference between these prices and the market prices against the defendant-, in favor of intervener, amounting to the said sum of $50,359.52.

11. In holding and finding that there was no liability on the part of the Galeton cotton mills to the intervener on account of its

failure to sell the duck, manufactured by the mill, at the full market price of the same.

Intervener claims and contends that the product of the Galeton cotton mills was as good, or should have been as good, as the product of other competing mills, concerning which evidence was introduced before the master; and that the evidence shows, and the master should have found, that as much should have been realized per yard or per pound from the sale of the product of the Galeton cotton mills, as was realized, as shown by the evidence, for the product of the competing mills; or, in other words, the market prices for the ducks should have been realized, and that this was not done.

Intervener claims and contends that the evidence shows that the number of yards of the product sold, and the amount realized on same, as appearing on the account sales rendered by N. Boynton & Co., summarized, were as follows:

(*a.*) For 7 oz. and less than 8 oz., 1,944,638 yards, were returned at $127,497.76; whereas, intervener claims and contends that there should have been realized and returned according to the evidence, the sum of $145,445.98, showing a deficit of $17,951.22.

(*b.*) For 8 oz. and less than 9 oz., aggregating 4,510,140 yards, there is returned on account sales $286,195.04; whereas, intervener claims and contends, according to the evidence, there should have been realized and returned the sum of $389,495.51, showing a deficit of $53,300.47.

(*c.*) For 9 oz. and less than 11 oz., aggregating 2,245,301 yards, there is returned as per account sales, $197,731.71; whereas intervener claims and contends, under the evidence, there should have been realized and returned $221,121.25, showing a deficit of $25,389.54.

In other words, to sum up, for the 8,700,079 yards of product, so reported and sold, and returned, as per account sales, at $611,424.51, intervener claims and contends, under the evidence, that the Galeton cotton mills, or the agents representing same, should have realized and returned the sum of $708,065.74; thus showing a
543 deficit or undervaluation, to be accounted for, of the sum of $96,641.23.

Intervener claims and contends that there should have been a finding in favor of intervener against the Galeton cotton mills for this difference between the amount returned by N. Boynton & Co., and the true value of the same, as shown by the evidence, to wit: the sum of $96,641.23.

The foregoing does not include the $3,896.48, deficit in valuation as to the stock on hand unsold, as already shown, the two together aggregating, as the amount of total deficit and undervaluation, the sum of $100,537.71.

12. Intervener claims and contends that the special master erred in this: Counsel for intervener, when they were first offered, objected to the admission in evidence of the books of the Galeton cotton mills, to wit: the journal and ledger, on the grounds that they had

not been shown to be the original books, or books of original entry of the mills, and intervener offered evidence that they were too fresh to have been original books, and had no check-marks upon them, such as books of original entry, in daily use, commonly have. The books were, at first, ruled in by the master. Afterwards, counsel for intervener offered further evidence, and showed that the "water-marks" on the paper, of which the books were made, showed the date of "1894," whereas, the entries on the books purported to have commenced in 1892, and intervener renewed its motion to exclude the books on the introduction of this new evidence. The master then stated that he would exclude the books from evidence. But, nevertheless, the master, in making up his report, has used, and relied upon these books, and has had them audited, in part, by A. L. Waldo, the expert accountant, employed by him, and has based his report upon the contents of these books.

Intervener claims and contends that these books should not have been used or considered by the master at all, in making up his report, but that the report should have been made up from the other evidence that was before the master, excluding from consideration entirely these books.

13. Intervener claims and contends that the special master erred in admitting, over the objection of counsel for intervener, the testimony of L. Lanier, that the Galeton cotton mills, during the period of its operation, from September 6th, 1892, to May, 1896, made a net loss of $4,654.60; the objection to said testimony being that it was the result of a calculation, made by a person or persons other than the witness, from the books of the mills, and that the books were the best evidence of their contents, and of any loss or profit made or sustained by the mills. The books having been excluded by the master, as evidence, this testimony, showing the result of a calculation or estimate of profit and loss, as based upon receipts and expenditures, as shown by these books, should have been excluded from evidence and should not have been used by the master in making up his report, as correctly showing the result of the operation of the mills for the period of accounting.

Counsel for intervener claim and contend that this was a fundamental error that vitiates the entire finding of the special
544 master, and that he should be directed by the court to reconsider the evidence and submit a new report in the case, excluding entirely from consideration the books which were excluded by him.

Attention is called to the fact that on page 37 of his report, where he makes the summary of the account, the master gives a credit to the Galeton cotton mills of this amount, in these words: "Deduct loss as shown by the books, April 30th, 1896, $4,654.60."

14. Intervener claims and contends that the special master erred in admitting and using, as original evidence, the accounts of sales made by N. Boynton & Co. to the Galeton cotton mills, and in using the same as being a correct report of sales made by N. Boynton &

Company of the product of the mills, the testimony not having been sufficient, as intervener contends, to show that these account sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co. on account of the sale of the product of the mills during the period of accounting.

Counsel for intervener did not object to these accounts of sale going in evidence, as showing, in connection with the testimony of L. Lanier, the amounts of money actually paid by N. Boynton & Co., to the Galeton cotton mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for intervener contends, that they correctly represented the actual and proper receipts and disbursements on that account.

15. The master erred in not allowing to the intervener a large sum, to wit: $25,000.00, for injury to the mill machinery during the period covered by this investigation. The evidence shows that the machinery, by not being kept in repair, and by reason of exposure to the weather, consequent upon the failure to repair the roof of the main building, was seriously damaged, to wit: in the sum above named.

Nov. 1, 1897.

J. M. CHILTON,
ALLEN FORT,
W. R. HAMMOND,
BIGBY, REED & BERRY,
Counsel for Intervener.

The above and foregoing exceptions overruled.
This Nov. 2d, 1897.

THOS. B. FELDER, JR.,
Special Master.

Filing.—Filed in clerk's office Nov. 2d, 1897.

O. C. FULLER, *Clerk.*

545 In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING COMPANY and WILLIAM T. HUGULEY, Movants,
vs.
THE GALETON COTTON MILLS ET AL., Respondents. } Equity.

Intervention of the Huguley Manufacturing Company for accounting for rents, issues and profits.

The greater part of the previous history of this case can be found in the opinions of the court in Robinson, trustee, *vs.* The Huguley Mfg. Co., *et al.*, 51 F. 268, 56 F. 690, 67 F. 189, 72nd F. 708.

After the last decision of the appellate court as reported in 72nd F. 708 *supra*, the property was sold under the last decree and bought by the same purchasers as at the former sale. Subsequently the following order was made:

"It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property, connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor." "This March 16, 1896."

The report of the special master was filed October 9, 1897, so that the hearing before the special master occupied something like 18 months. Of course the hearing was at intervals as suited the convenience of counsel and the special master, and as the necessity for getting witnesses and testimony required.

The special master having filed his report, exceptions were made by both sides, and it is on these exceptions that the present hearing is had. The special master reported against the purchasers of the property $39,713.51, which was awarded in favor of the movants against the Galeton cotton mills. The exceptions need not at all be noticed in detail, as they can be embraced under a few general heads which, it is believed, will cover the entire subject-matter of the report and the exceptions.

Counsel for the movants claim that the special master evidently misunderstood the order of the court and put an incorcorrect construction thereon in that he was required to "take an account of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale." They contend that the effect of the order of the court was to determine in advance that the correct rule to be observed by the master was to ascertain what the
546 property by good management should have earned, as well as what it really did earn, during the period in question. My own construction of this order would be that its meaning was that the special master should ascertain the proper receipts and disbursements incident to the operation of the property, if he should find that it had been operated or what it should have earned in the event it had not been operated.

The special master, in his report states the following to be the rule which he adopted in ascertaining the amount for which the holders of the property should be held liable:

"The Galeton cotton mills, having obtained possession of the property under an erroneous decree of foreclosure, which decree was ap-

pealed from and reversed, the main issue between the parties is as to the rule of liability which should be applied under these circumstances. In the opinion of the undersigned, the Galeton cotton mills, being a creditor in possession under an erroneous decree of foreclosure, is chargeable only with the profits actually earned, or those which would have been earned but for its own wilful default." Citing in support of the foregoing 78 Ga. 597, Ala. Repts. v. 1, 496, Pomeroy's Eq., secs. 1216–'17, Snell's Eq., 308, Coot on Mortgages, 18th L. L. 152, 2 Jones on Mortgages, 1223, 26 Cratton, 61, 78 N. Y., 556, English Notes 2 Thornburg *vs.* Baker, 2 White and Tudor Leading Cases, part 2, 1979 to 1077.

The special master then proceeds to say that "the evidence does not show that the Galeton cotton mills has been guilty of any wilful default in the management of the property or in earning profits, but on the contrary shows that the company has made the most that could be made out of the property in the condition it was in when they received it." In other words, the conclusion of the special master seems to have been that the Galeton cotton mills were only liable to account for such profits as they made while operating the mills in good faith and with reasonable care and prudence. The converse of this proposition is that the company operating the mills would have been liable for such amounts as they ought to have made, if the evidence had shown that in bad faith they had operated the mills so as to produce less than they would have produced by ordinarily careful and prudent management. This seems to state the correct rule on the subject.

The purchasing committee for the bondholders from whom the Galeton cotton mills obtained the property, purchased the same in good faith under a decree regularly entered in this court and at a time when there had — only been no appeal from the decree but when an appeal which had been commenced had been abandoned by the then counsel for the defendants in the case. They must have come into possession of the property in good faith believing in their title. It was rather a close question as to whether or not the defendants were entitled to restitution at all after the reversal of the first decree by the appellate court, but restitution was ordered after a careful investigation on certain conditions which were not complied with, and which the appellate court approved. The fact that the appellate court also entertained some doubt as to whether or not it was a case where restitution should be ordered. I think may be fairly
547 gathered from a clause in the last opinion of that court, in which this language occurs: "We are, therefore, relieved from inquiring into and deciding whether the case was one calling for restitution, as the appellants insisted that it was. The court held that it was and the other parties have not appealed."

The question is settled now, however, and is referred to only to show the extent of the good-faith holding of the purchasers when they entered into possession of this property and organized the Galeton cotton mills, and to support the conclusion just stated that

they would certainly be held to no stricter rule than to an account for what they actually earned in the operation of the property while acting in good faith with ordinary and reasonable care and diligence.

The determination of this question goes very far towards a determination of all the contentions in the case. The master having found, after a long and tedious examination of all the books, papers and accounts, and after having heard the testimony of all the parties at interest that there was no wilful default or bad faith on the part of the Galeton cotton mills in the management and control of this property, it would require of course a clear case of error to justify the court in interfering with the conclusion reached by him. No such error is apparent. On the contrary, an examination of the record in this case tends to support the conclusion of the master. It seems reasonably clear that the mill was operated in the ordinary and usual way, and also, that instead of the facts and circumstances showing any bad faith or wilful failure to earn profits, they show the reverse.

In reference to the profits arising from the operation of the mill, the two principal matters in regard to which it is claimed by the movants that the special master erred, are as to the purchase of the cotton used in the mill and the prices paid for it, on the one hand; and the sale of goods manufactured at the mill and the prices received for the same on the other hand.

It appears from the evidence in the case that the cotton for this mill and for two other mills was purchased by W. C. and L. Lanier, of West Point, Ga., near where the property in question was located. It is claimed that the cotton furnished the mill by W. C. and L. Lanier was charged to them at a higher price than cotton ruled in the market at the dates that the different lots of cotton were delivered. The argument in favor of this contention is mostly based on a statement of averages as to the ruling price of cotton at different dates while the mill was being operated, compared with the price of the cotton delivered to the mills. The claim for the movants seems to be that L. Lanier of the firm of W. C. and L. Lanier, the firm purchasing the cotton, was the principal owner of the property in question and largely interested in this controversy, and that the cotton was so manipulated as to charge it to this mill at a higher price than was just or proper and for more than it cost or was worth in the market. The special master went into an exhaustive examination of this question; he heard a large amount of evidence and
548 had at his command all the data that could be desired for reaching a correct conclusion on the subject. He found against the movants in this question. The part of his report referring to the same is as follows:

"It is also insisted by movant that the charges for cotton purchased by the Galeton cotton mills were higher than the ruling market prices at the dates of purchase, and that the movant is entitled to a credit for the difference between the price paid for cotton

and the price for which it could have been procured. On this point some of the witnesses testified that the Galeton cotton mill always paid the market prices. The cotton for this mill was purchased by W. C. and L. Lanier who also did the buying for several other mills during the same period of time. Mr. Lanier testified that the cotton was charged to the Galeton cotton mill at the same prices as to the other mills, the same being the actual cost price of the cotton. He admitted that in a few occasional instances cotton was furnished to the mill 'to be priced,' but this was not the custom, and it was done in such comparatively few instances and comparatively small purchases that it does not appear that the mills sustained loss thereby to any appreciable degree. To support the alleged overcharge on cotton, the widest latitude was allowed movant in the introduction of testimony, and a number of witnesses were examined as to the average market prices of various grades of cotton in Atlanta, La Grange, Newman and West Point. In addition to this, the cotton books of several large firms in West Point, who dealt in cotton, were introduced. It does not appear from this mass of testimony that the Galeton cotton mills have paid more for their cotton than it could have been procured for at the time it was bought. The movant undertakes to establish such an inference by a comparison of the prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, would be to show the date and amount of each purchase and the market prices of cotton in West Point on those days. On the whole, the undersigned is of opinion that the claim of overchage on cotton purchased by the Galeton cotton mills is not made out by the evidence, and therefore, said claim is disallowed."

I have been furnished by the movants with some data and calculations on this subject, of the purchase of cotton, and after carefully examining it in connection with the whole case, I am satisfied that there is no just reason for interfering with the conclusion of the special master on this point.

In reference to the claim that goods were sold for less than the market price, the special master reports, as follows:

"It was further claimed by the movant, that the products of the mill were sold at inadequate prices. This mill was engaged in the manufacture of cotton ducks, known as 7 oz., and 10 oz. duck, respectively. The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton cotton
549 mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent, the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, and that failure to realize the best price obtainable was by the wilful default of the respondent. Neither of these propositions is shown

by the evidence. While the evidence for the movant, in the sha in which it is presented, may suggest an inference that the goo sold for the account of the Gaffeton cotton mills ought to ha brought better prices, still the evidence strongly indicates that t product of this mill was not equally in quality to those goods which the market prices applies. Furthermore, so long as the sel ing agents acted in good faith, and sold the products of the mill fair prices, not necessarily the best prices, the movant would hav no cause to complain. The undersigned is of the opinion, that th selling agents of this mill realized a good price for its products, an perhaps as good prices as could have been gotten under the circum stances, and, therefore, the finding must be against the claim of th movant that the prices realized for the goods produced by the mil were grossly insufficient."

"Indeed, in regard to the claim of overvaluation of cotton bough and under valuation of goods sold, the undersigned thinks that the movant must stand by the actual results until he can show that those results are materially different from what they should have been; and that they were brought about intentionally or by negligence so gross as to amount to wilful default."

I am unable to find any error in this part of the special master's report. He had the evidence of these sales all before him and seems to have examined quite a number of witnesses as to the actual price of goods of the same kind and qualities, and concluded "that the selling agents of this mill realized good prices for its products and perhaps as good prices as could have been gotten under the circumstances." And this is justified by the facts. Counsel for the movants were informed during the argument, that the court was thoroughly satisfied, on this branch of the case, with the master's report; but it has been argued in the briefs submitted since and through careful consideration has been given the argument thus submitted, I find no reason to change the conclusion reached, on the hearing, that the master's report on this branch of the case was, at least, fully justified by the evidence, if indeed, the evidence did not require it.

In this connection there was considerable discussion on the argument of the case, and there has been since in the briefs of counsel, as to certain books which were offered in evidence by the purchasers of this property. The books were first admitted in evidence and afterwards it turned out from water marks that they were made after the date of certain entries. For this reason the master ruled them out and stated he would only use them, in his examination of the case, so far as they were supported by other evidence, vouchers, &c. It is not shown anywhere, so far as I have seen in the evidence, that these books contain incorrect entries nor that anything entered
550 on them was fraud-ently entered in order to mislead and deceive. It would seem from what appears in the record, that the master only used these books, so far as they were useful, in finding other data to use in his investigation of these accounts. I am

wholly unable to see any harm that was done the movant by such use of these books. If the master verified all of the entries on the books before he made any use of them, that was certainly as much as could be asked and this he seems to have done.

The special master in his report says: "It was shown to the satisfaction of the undersigned that the books introduced by the respondent, to wit: the journal and ledger, purporting to be the books of original entry of the Galeton cotton mills were not such, but the same appeared to be copied. Yet all the original vouchers from which, no doubt, the original books of entry were made up, were brought into court and tendered along with the said books. These vouchers were submitted to the inspection of the adverse party as well as to the court."

It is also insisted that the master failed to comply with the 79th equity rule, which requires all parties accounting before a master to bring in their respective accounts in the form of debtor and creditors, etc. The master seems not only to have complied with this rule, but to have gone beyond it. He not only had a statement of the account brought in by L. Lanier, whom the movants seem to treat as their real antagonist in the case, but he had all the books, vouchers, cotton tickets, account sales, etc., before him. Counsel for the movants referred to this mass of evidence as "bushels of papers," and perhaps this is not an exaggeration. These papers were shown to the court in baskets at the hearing, and it was stated and not denied that the fullest liberty of examination of the whole matter was given to the master and to counsel on the hearing.

This covers the main contentions for the movants in the case as argued by them on the argument and in the briefs since filed, and disposes of the case so far as it is necessary to discuss the same.

There are three principal grounds of exceptions on the part of the Galeton cotton mills to the report of the master. The first relates to the conversion by the purchasers of this property of certain supplies and findings, which, it is claimed, did not pass by the sale and which belonged to the Huguley Manufacturing Co. There is some difficulty as to this item but I am unable to find satisfactory reasons for interfering with the special master's conclusions. There is doubt as to its correctness as matter of fact, but it is only a doubt. I have concluded, therefore, to let this item stand.

The next ground of exception claimed by the purchasers is as to the waste. I was impressed on the argument with the contention for the purchasers that the master has misconceived the evidence on this subject, but an examination of the record shows that there was evidence to justify this finding. Indeed, if the master had followed one of the witnesses in the case he would have found a somewhat larger amount than he did against the purchasers of this head. The ruling of the master upon this subject will not be disturbed.

551 The next exception for the purchasers is as to the refusal of the master to allow the Galeton cotton mills the amount

paid out by them for insurance on the property. The finding of the master as to this item is as follows:

"It appears that respondent kept the buildings, etc., insured, loss if any, payable to the Galeton cotton mills, for the sum of $75,000.00 at the rate of one per cent. per annum. If the buildings had been consumed by fire the proceeds therefor would not have inured in anywise to the benefit of the mortgagors. There seems to have been no contracts wherein the Galeton cotton mills was authorized to take out this insurance and charge the cost of it to the movants. This being true, it is the opinion of the undersigned that respondent had no right to charge to operating expenses the insurance premium, and I therefore find in favor of the movant against respondent on this ground the sum of $3,502.52 as principal, and interest from the 30th day of April, 1896, at the rate of 7 per cent. per annum making $353.45."

As to the finding upon this item, I think the special master was clearly in error. The holding of this property by the purchasing committee for the bondholders, and afterwards by the Galeton cotton mills has been analogized all along to the holding of real estate by a mortgagee in possession with the same rights, duties and liabilities, except as has been hereinbefore mentioned, these purchasers, in view of the manner in which they went into possession, the character of their possessions, etc., would be entitled to somewhat more liberal treatment than the usual mortgagee in possession. It is certain that no stricter rule of liability would be applied to them than that to which the law would hold a mortgagee in possession, whose duty it was to account to the mortgagor; and even in this view of the matter, it seems clear that it was the duty of the parties in possession of this property to keep the same insured. It appears from the report of the special master that this insurance was taken out in the name of the Galeton cotton mills, but it would have inured, in case of loss, necessarily to the benefit of all parties at interest.

A memorandum attached to the brief of counsel for the purchasers shows that the $3,502.52 was not all on real estate and machinery, but that part of it was on cotton in process of being worked, and manufactured goods, the output of the mill. This statement shows $1,815 on buildings and machinery, and $1,687 on cotton and goods. Unquestionably the purchasers should be allowed credit for this latter sum on the manufactured goods going through the mill, as one of the expenses of the business, and I am about as well satisfied as to their right to the $1,815 on buildings and machinery if this memorandum represents the facts of the case. I am unable, however, to find anything in the evidence which shows any such division of the insurance as this statement claims, and it must therefore be treated, for the purposes of this decision, controlled as the question here is by the record, as insurance on buildings and machinery. Even allowing this to be true, I think the special master should have allowed the purchasers this $3,502.52 as a credit. Treat-
552 ing the holders of this property as mortgage creditors in possession, which is the effect of the decisions heretofore made

in the case, it was reasonable care on their part to keep the property insured for the benefit of all the parties at interest; it was probably their duty to do so. But in any event, in case of fire, the amount received for insurance would necessarily have resulted to the benefit of the mortgagors. Looking at it in another way, it was a proper and legitimate expense connected with the holding and management of the property and one which could be paid out of the earnings of the mill. Why it should not be allowed as a just expense in connection with the possession and management of this property, I am wholly unable to see. No attempt will be made to discuss the numerous authorities cited pro and con. Sufficient it is to say that I am satisfied upon the law and facts, that the amount above named, $3,502.52, principal and $353.45 interest should be deducted from the finding by the master in favor of the movants. Making this deduction there would be left $35,857.54 in favor of the movants. The other exceptions by both parties are hereby overruled, and the report of the special master, except as stated, is confirmed.

This February 23rd, 1898.

WM. H. NEWMAN,
U. S. Judge.

Filed in office Feb'y 23, 1898.

O. C. FULLER, *Clerk.*

Decree on Exceptions to Report of Master.

In the Circuit Court of the U. S. for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
THE ALA. & GA. MFG. CO. ET AL. } No. 360. In Equity.

In the matter of reference to master and exceptions to his report by the Galeton Cotton Mills and J. J. Robinson, trustee, and exceptions of the Ala. & Ga. Mfg. Co., the Huguley Mfg. Co., and W. T. Huguley.

This cause having come on to be heard upon the report of T. B. Felder, Esq., special master, to whom it was referred by decretal order of this court, dated 16th of March, 1896, and said exceptions having been argued by counsel, it is thereupon ordered, adjudged and decreed as follows:

1. That the first exception filed by said Galeton Cotton Mills and the said Robinson, trustee, be and the same is hereby sustained, and that the sum of thirty-five hundred and two dollars and fifty-two cents, principal, and three hundred and fifty-three dollars and forty-five cents interest, charged against the purchasers in master's report, making a sum total of thirty-eight hundred and fifty-five dollars

and ninety-seven cents, being the sum for principal and in-
553 terest paid out for insurance, should be deducted from the finding of the master in favor of the movant, which sum being deducted from the amount so found by the master in favor of the movant would leave the sum of thirty-five thousand eight hundred and fifty-seven dollars and fifty-four cents, which is decreed in favor of the movants.

2. All other exceptions by parties to the record are hereby overruled, and the report of the special master confirmed.

3. The cost of all exceptions overruled will be taxed against the party filing the same, and the costs of the exceptions sustained will be taxed against the movants.

4. The decree is rendered without prejudice to the right of J. J. Robinson, trustee, and the Galeton Cotton Mills, or other party at interest, to have the costs, fees and expenses ascertained, adjudged and taxed as against the proceeds of the sale of the mortgaged property and as against the sum ascertained to be due on exceptions to the master's report, and without prejudice to their right to have said sums so found to be due by the master's report after costs, fees and expenses are deducted, applied to the decree of this court in favor of said plaintiff against said defendant, if it shall appear that the plaintiff is so entitled.

Motion for that purpose having been this day filed. This Feb'y 28, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 28 day of Feb'y, 1898.

O. C. FULLER, *Clerk.*

Petition of W. R. Hammond et al. for Allowance of Fees.

U. S. Circuit Court.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. COMPANY ET AL., HUGULEY MFG. Company. } In Equity.

W. R. Hammond, John M. Chilton, Allen Fort and Jno. C. Reed, represent to the court, as counsel for the Huguley Mfg. Company, they have prosecuted the application of said Huguley Mfg. Company on the hearing before Thos. B. Felder, special master, appointed by this court to ascertain the amount due to the said Huguley Mfg. Company by the Galeton cotton mills, for the use and occupation of said property, and before this court, which application has resulted in a finding by the special master, and by the court, of the amount of $35,857.53, which amount, or a large part thereof, according to

the opinion of this court, already filed, but in which no decree has yet been rendered, is to be applied to the payment of the balance due the bondholders of the Ga. & Ala. Mfg. Co. of the principal and interest on their bonds, as shown by the decree of the court,
554 and your petitioners pray the court, the Huguley Mfg. Co., joining in the petition, that they be allowed out of said fund their fees, as attorneys, for bringing the same into court, and that the court ascertain the amount due them for their services as counsel in said proceeding, and allow them a lien on said fund for the same, and that only the balance of said fund, after the ascertainment and allowance of said fees, shall be credited or paid over to said mortgage creditors, and that the Galeton cotton mills be required to pay into court for the benefit of your petitioners, whatever amount may be ascertained to be due them as counsel fees for such services, and that your petitioners may have a lien upon said property for said amount of their fees in said cause, in the event of the failure of the said cotton mills to pay the same into court.

Your petitioners pray for such other and further relief as they may be entitled to, in accordance with the principles of equity, for the enforcement of said lien upon said property or said fund, or of their rights in the premises in any other way.

W. R. HAMMOND.
JOHN M. CHILTON.
ALLEN FORT.
JOHN C. REED.

Service.—Service acknowledged, copy waived. Ap'l 6, 1898.

P. H. BREWSTER,
B. F. ABBOTT,
Sols. as of Record.

Filing.—Filed in clerk's office April 18, 1898.
W. C. CARTER, *Dep. Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, and THE GALETON COTTON Mills
vs.
ALABAMA & GEORGIA MFG. CO., HUGULEY MFG. CO. } In Equity.

Application to Tax Costs and to Apply Rents and Profits to Mortgage Debt.

In order to make clear what is now for hearing and determination in this case, it is probably best to give a brief statement of what has occurred before during the progress of the case.

On the 21st day of January, 1891, J. J. Robinson, trustee, filed a bill in this court against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T. Huguley for the purpose of foreclosing a mortgage executed by the Alabama & Georgia Mfg. Co., to Huguley, Yancey and Robinson as trustee. Yancey was dead, Huguley's interest was alleged to be adverse to that of the bondholders, so that Robinson filed the bill alone
555 and made Huguley a party defendant. The foreclosure was for default in the payment of interest; the defense was that the interest was tendered within the time required, and that under the facts complainant was not entitled to a foreclosure. A decree was rendered foreclosing the mortgage, in the circuit court, which was reversed in the circuit court of appeals, not because of any error in the decision of the circuit court that complainant was entitled to foreclosure, but on the ground that there had been no accounting as to the bonds on which the interest had been paid, and those on which the interest had not been paid.

In the meantime, and pending the appeal, the property had been sold and had been bought in for the bondholders by a committee representing their interests. The case coming back to the circuit court, the Huguley Mfg. Co. demanded restitution which was awarded on certain conditions, which conditions were not complied with. The case was referred to a master, an accounting was had and decree subsequently rendered foreclosing the mortgage for $45,000.00 principal and $17,005.92 interests, with costs. Under this decree the property was sold for $66,000.00. Afterward the property was again sold and bought by the former purchasers, that is, by the mortgage bondholders. There had elapsed between the first and second sales three years and eight months. An application was made to the court by the Huguley Mfg. Co. to require the purchasers to account for the rents and profits during the time of their possession under the first sale and before the second purchase. An order was granted to this effect and a master appointed to hear evidence and take the account. The master, after a lengthy hearing, reported the amount of the rents and profits during the three years and eight months, which report, after slight modification, was approved for $35,857.53.

Judgment has been entered in favor of Robinson, trustee, for any deficiency between the amount of his debt and the amount the property brought at the sale. This deficiency is a few thousand dollars more than the amount of the rents and profits found by the master against the purchasers.

Motion is now made by the purchasers, who, as stated, are the bondholders, to set off the amount found for rents and profits during the time of their possession between the two sales against the amount of the deficiency decree. This is resisted by the Huguley Mfg. Co., it is claiming the rents and profits, and that is the question now presented for determination.

The mortgage under which the property was sold was made by

the Alabama & Georgia Mfg. Co., in January, 1884. Subsequently by reason of some litigation in the State court, the property of the Alabama & Georgia Mfg. Co. went into the hands of a receiver and was sold and bought by persons who afterward organized the Huguley Mfg. Co., they buying at the receiver's sale subject to the mortgage of Robinson, trustee. The contention now is that while the Alabama & Georgia Mfg. Co. does not, and that consequently a debt against the Alabama & Georgia Mfg. Co. cannot, be set off against a debt which is due to the Huguley Mfg. Co., the said last-named company having been deprived of possession by virtue of
556 the first sale, it is claimed that the possession of the purchasers was in its right and that the rents and profits accrued to it. The proposition stated in general terms is this: That one buying mortgaged property does not assume the mortgage debt, that he purchases simply the equity of redemption in the property, and that as he does not undertake to pay the mortgage debt he cannot be required to pay it, nor can anything due him be applied by the court to its payment farther than the property itself. Consequently, it is said in this case that the income of his property for the three years and eight months that the purchasers were in possession between the two sales was, by virtue of the fact that they were ousted from the possession at time of the first sale, rightfully due the Huguley Mfg. Co., and that as the balance of the mortgage debt was due by the Alabama & Georgia Mfg. Co., that which was due the Huguley Mfg. Co. cannot be applied to the payment of the debt of the Alabama & Georgia Mfg. Co.

The difficulty about this contention is that the amount found by the master as rents and profits, is the rents and profits of the mortgaged property, and during the period when the mortgagee was in possession as purchaser under a sale regularly made under a decree of this court. Their possession was not illegal in the sense that it was wrongful*ly* or usurped, indeed it can hardly be said that their possession was illegal at all. They certainly went lawfully into possession of the property, and after restitution was ordered by the court, it was, on terms which the Huguley Mfg. Co. failed to comply with, and the effect of that order undoubtedly was to recognize the justice of their possession until the Huguley Mfg. Co. did that which the court had required as a prerequisite to restitution. But the effect of all the decisions unquestionably was, and the order of the court was, that their holding was such that they must account for the rents and profits during the three years and eight months referred to. Now should the amount of the rents and profits be paid over to the Huguley Mfg. Co., or be applied to the extinguishment, so far as it would go, of the deficiency decree? It seems to me beyond question that the purchasers are entitled to have this amount applied to the balance due on their debt. In the first place the original petition filed in this case for restitution and for an accounting, etc., asked that the rents and profits of the property should be applied to the payment of the mortgage debt. The

language of the petition, after asking that the rents and profits be applied to the repayment of such portion, if any, of $10,000.00 as petitioners might be held liable for, asked that the same be applied "next to the payment of any interest in arrears on said $65,000.00 of said bonds," and that then the remainder be paid to the Huguley Mfg. Co. In addition to this the court, by its order of June 25th, 1896, on the coming in of the report of the commissioner making the second sale, provided, among other things, as follows: "It is ordered, adjudged and decreed that should the said accounting finally result in a judgment in favor of the Huguley Mfg. Co., then such judgment for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure pro-
557 ceeding shall, for such excess be and remain a lien upon said property in favor of the Huguley Mfg. Co., as against the purchasers at said sale or any persons holding under them." So that it appears that the Huguley Mfg. Co., through its counsel, conceded prior to the filing of the report by the special master that the rents and profits should be applied to the extinguishment of the remainder of the mortgage debt. It is unnecessary, however, to hold the Huguley Mfg. Co. to the langauge of their petition or of the order referred to, for the purpose of disposing of the case, but the prayer of their petition and the order of court which was taken at the time without objection, so far as appears, indicate what the view of counsel on both sides was at the time as to how these rents and profits should be applied. But independently of this the rule seems to be thoroughly established by all the authorities that where a mortgagee goes legally into possession of the mortgaged property as these mortgage-s certainly did, that they are only accountable for the rents and profits by the application of the same to their debt. These people were in possession of the property on which they had their mortgage, and were operating the property after having gone into possession under a decree regularly entered and a sale regularly made. They made these profits themselves. Shall it be held that they must pay them over to another so long as their debt for the whole of which they were given a lien on the mortgaged property remains unpaid? It must be remembered that during the time of their possession between the two sales, that the whole mortgage debt, with its lien, existed against the property. The first sale having been set aside, the mortgage and the whole debt stood open against the property, and therefore these purchasers, it seems to me, stood like any other mortgagee going legally into possession of property with the duty to account for the rents and profits, but with the equal right to apply the same to their mortgage debt.

It is not denied, as I understand it, in the argument, that if a bill had been filed alleging insufficiency of this property to pay the mortgage debt, that the court would have appointed a receiver and would have, through such receiver, impounded the rents and profits in order to apply the same to the mortgage debt. It is replied, how-

ever, that no such allegation was made when the bill was filed and no receiver asked for. The result has shown conclusively that the property was insufficient to pay the mortgage debt, and will the court deprive these mortgagees of the benefit of that which they themselves have made in the way of rents and profits while in possession as indicated, when it would, by positive order, have given them the benefit of such rents and profits if they had asked them in advance. In Kountz *vs.* Omaha Hotel Company, 107 U. S. 378, it is held that "courts of equity always have the power where the debtor is insolvent and the mortgaged property is an insufficient security for the debt, and there is good cause to believe that it will be wasted or deteriorated in the hands of the mortgagor, as by cutting of timber, suffering dilapidation, etc., to take charge of the property by means of a receiver, and preserve not only the corpus but the rents and profits for the satisfaction of the debt." This doctrine is
558 reiterated in Grant *vs.* Insurance Co., 121 U. S., 105, and in Shepard *vs.* Pepper, 133 U. S., 626.

It is not denied by counsel for the Huguley Mfg. Co., that as against the Alabama & Georgia Mfg. Co., the bondholders in possession would have had the right to have these rents and profits applied to the extinguishment of the mortgage debt. Where by private sale or by judicial sale the equity of redemption passes out of the mortgagor into a third party, does the third party acquire any more rights in this respect than the mortgagor had? In other words, can the rights of the mortgagee which have passed to him by the contract of mortgage be affected in any way afterwards by change in any respect in the holder of the equity of redemption? If so, it would be in the power of the mortgagor to give to a third party rights as against the mortgagee which he himself did not have. It being fundamental that the mortgagee in possession has the right to apply the rents and profits to the extinguishment of the mortgage debt as against the mortgagor, the contention it seems is entirely unsound that a third party should claim such rents and profits when the mortgagor himself could not. If so the invio-bility which is supposed to attach to valid contracts is to that extent destroyed.

The light thrown on this case by the very full and able argument on both sides, of this last question, makes it exceedingly doubtful in my mind as to whether or not the proper direction was given the case at the time application was made by the Huguley Mfg. Co. for restitution. I am not clear but that the right course *which* would have been to have only allowed these purchasers to be disturbed in their possession by the payment to them of the mortgage debt, or at least of that part of it which by the finding of the master had failed to receive interest and which was entitled to foreclosure. It is of course useless to discuss that matter now except as it may help to elucidate the present question.

In the case of Bryan *vs.* Kales, 162 U. S., 411, it is held: "When a mortgagee is in possession of the mortgaged real estate claiming

under a foreclosure sale, one claiming under mortgagor cannot by setting up that the foreclosure proceeding was invalid, maintain ejectment to recover the premises without his offering to redeem and tendering payment of the mortgage debt." It is said in reply to this case, by counsel for the Huguley Mfg. Co., that in the case cited it was a collateral attack upon the judgment of foreclosure, but an examination of the opinion shows that the court waived any expression of opinion as to whether it was open to attack collaterally and simply decided that in any event the rule just announced, which is the head-note of the case, was the correct one and was controlling independently of other questions.

If the Huguley Mfg. Co. could not oust the purchasers in this case without paying to them the entire mortgage debt, how can they claim for themselves that which went into the hands of the purchasers as rents and profits of the property so long as it is insufficient to discharge the mortgage debt? It seems too clear for discussion that so long as the mortgagees have not received more than the amount of their debt out of the property, that one claiming
559 under the mortgagor cannot sustain a claim against them for that which is earned by the property.

A large number of authorities have been cited on both sides in this discussion and the argument has taken rather a wide range, but I deem it unnecessary to go further into the case.

The contention for the Huguley Mfg. Co. has been very thoroughly and very ably presented but I do not think it is sound. It seems clear to me that these bondholders as purchasers while in possession were entitled to have the rents and profits derived from the mortgaged property applied to the payment of the bonds and interest thereon and that the Huguley Mfg. Co. is not entitled to the same.

At the time the purchasers took possession of this property, there were on hand certain findings, as they are called, certain personal property in the mill which was not covered by the mortgage. This was used by the purchasers and the special master in his report values the findings at $2,500.00. This report was confirmed by the court. It is apparent that the money derived from this source cannot be applied to the mortgage debt. It is earnestly contended, however, that if this property was not embraced in the mortgage the court has nothing to do with that in this case, that the finding of the master was gratuitous and that the parties should be left to their legal remedy outside of this litigation. The court put these purchasers in possession of all this property and the findings were on hand in the mill at the time possession was awarded. Therefore the proper application of this amount, in order to do complete equity and wind up this litigation, should be determined by the court here and now.

As to this $2,500.00 I am of the opinion that it must be accounted for to the Huguley Mfg. Co. by the Galeton cotton mills. As to the amount found by the special master for rents and profits of

$35,857.53 it must go so far as it does, to the extinguishment of the mortgage debt and interest. A decree may be taken in accordance with these views.

This April 11th, 1898.

W. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 11th day of April, 1898.

O. C. FULLER, *Clerk.*

Motion of Huguley Mfg. Co. to Ascertain Balance Due on Mortgage Debt, etc.

United States Circuit Court.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY,
Huguley Mfg. Co.
} In Equity.

The defendant, The Huguley Mfg. Company, come- now, after the opinion by the court in reference to the application of the
560 amount found to be due to it by the Galeton cotton mills, and before final decree, and without prejudice to its right to except to any ruling made in the cause in reference to the report of the special master, and without prejudice to its right of appeal from any decree that may be hereafter rendered by the court, denying it the right to recover the amount of the rents and profits due it, from the Galeton cotton mills, and appropriating said amount to the payment of the balance due on said mortgage indebtedness; and moves the court, if the court should render a final decree applying the rents and profits of said Galeton cotton mills to the payment of said balance of said mortgage debt, to apply the amount ascertained to be due to movant for said rents and profits, to the mortgage debt; at the time the rents and profits were earned, and ascertain the balance then due, and only charge movant with the baiance of the mortgage indebtedness, thus ascertained, with interest from date of such application.

Movant suggests that the proper way to ascertain the date when this net earning of the mill should be applied, is to take the date half way between the first and last sales of the property, which would be August 1, 1894, and ascertain the amount of principal and interest due on the bonds at that date, and deduct the whole net earnings, as ascertained by the court, from said amount, and only charge movant with the difference from that date, to wit, August 1, 1894, up to the date of the second sale of the property, and allow movant the difference between the amount the property brought at that sale, and the amount of the principal and interest

due on said ascertained balance, at the date of the last sale, to wit, May 6, 1896. Movant shows to the court that such difference would be the sum of $3,232.00, besides interest from May 6, 1896, which amount together with the amount of $2,500.00, principal, and $891.04 interest to October 9, 1897, allowed by the master for property converted, with interest on said $2,500.00 from October 9, 1897, movant prays may be allowed it in the final decree, as the amount due to it by the Galeton cotton mills, and that it may have a lien upon said mill and property for said amounts.

Movant attaches hereto a tabulated statement, showing the amount due as claimed herein.

W. R. HAMMOND,
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Att'ys for Huguley Mfg. Co.

561 *Statement Showing the Amount Due Huguley Mfg. Co. as per Opinion of Court on Last Hearing.*

Amount of decree, March 30, 1895.

(Last printed Record, p. 280–289.)

Principal, matured bonds	$45,000.00	
Int. to November 1, 1894	17,005.92	
		$62,005.92
Principal, unmatured bonds	$20,000.00	
Int. to November 1, 1894	3,451.24	
		23,451.24
Total amount		$85,457.16
Deduct 3 mos. int. on prin	$65,000.00	
Plus coupons	17,440.00	
	$82,440.00	
Total interest at 8 per cent		1,648.80
Net balance due Aug. 1, 1894		$83,808.36
Deduct earning of mill, as shown by master's report, without interest, and less item of insurance, disallowed by court		28,748.76
Leaves balance due on Aug. 1, 1894		$55,059.60
Interest on same to date of last sale, May 1, 1896, 1 yr., 9 mos.		7,708.40
Total amount due May 1, 1896		$62,768.00

Amount of sale May 1, 1896		66,000.00
Balance		$3,232.00
Int. to April 16, 1898		506.60
Balance surplus (a/c rents and profits)		$3,738.60
Add amount allowed for property converted, prin	$2,500.00	
Interest to October 9, 1897	891.04	
		3,391.04
Int. on $2,500.00 to April 16, 1898		85.00
		$7,214.64

Service.—Service acknowledged, copyrec'd, Apr. 16, '98.

P. H. BREWSTER,
B. F. ABBOTT,
Sols. as of Record.

Filing.—Filed in clerk's office April 18, 1898.

W. C. CARTER,
Dep. Clerk.

562 In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee; THE GALETON COTTON MILLS,
vs.
ALABAMA & GA. MFG. CO., THE HUGULEY MFG. CO. } Equity.

The question before the court on the last hearing in this case, relates to giving practical direction to the finding of the court as to the manner in which the last ruling in the case as to rents and profits shall be carried into effect. The court decided in an opinion filed on the 11th instant, that the deficiency decree, as to the balence due the mortgage debt, could be set off against the rents and profits. It was taken for granted in that decision that the deficiency decree, somewhat exceeded the amount found for rents and profits.

Counsel for the Huguley Mfg. Co., now seek to have the rents and profits applied to the deficiency decree, or credited thereon in such way as to change the result and leave a small balance in favor of the Huguley Company. It is claimed that the rents and profits should be credited on the deficiency decree at the time such rents and profits were earned, and that the law will now apply them in that way. So as we have no data by which to apply them at stated intervals during the period of time that elapsed between the two sales, the first day of August, 1894, is taken by counsel as a period midway between the first and the last sale upon the theory that

that will establish an average, and the claim is that the credit should be made as of that date.

The result of this contention, if carried into effect, is really to increase the amount found by the special master in favor of the Huguley Mfg. Co. On some of the items found by the special master he allowed interest from a period before the last sale, and on some he did not. So that attention was necessarily called to this fact as it appeared in the report. If fault was found with this report by the Huguley Mfg. Co., it should have excepted to the same at the time the other exceptions were filed. No exception was made on this ground, however, and the report was confirmed at the last term of the court. I think the report of the special master as modified by the court in the opinion filed February 23rd of this year, fixes the amount which must be applied as against the deficiency decree.

There is no practical difficulty about the matter, because to the extent that these purchasers are compelled to pay the expenses of this litigation, the same should be credited, I think, on the amount of rents and profits, which would wipe out the amount claimed in its favor by counsel for the Huguley Mfg. Co. So that the motion of counsel to make the application *the amount claimed in its favor of counsel for the Huguley* of these rents and profits in the manner set out in their last petition to the court, will be denied.

The matter of apportioning the costs between the parties will be disposed of by a later order.

WM. T. NEWMAN,
U. S. Judge.

This April 26th, 1898.

563 Filed in clerk's office 27th day of April, 1898.

O. C. FULLER, *Clerk.*

Decree, 4 June, 1898.

U. S. Circuit Court for the Northern Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALA. & GEORGIA MFG. CO. ET AL. } No. 360. In Equity.

This cause came on for further hearing on the application of said Robinson, trustee, and Galeton Cotton Mills, to tax fees, costs and expenses, and to apply net proceeds of amount of rents, issues and profits to the mortgage debt; and on the application of W. R. Hammond, J. M. Chilton, J. C. Reed and Allen Fort, for taxations of solicitors' fees, as against the amount of rents and profits found by the master before the application of the same to the mortgage debt; and after argument of counsel it was considered, ordered and decreed as follows:

1. The application of said W. R. Hammond, J. M. Chilton, J. C. Reed and Allen Fort for taxation of solicitors' fees against the amount of rents and profits, adjudged to have been earned by the purchaser of the property while in possession is denied.

2. That the sum of two hundred and forty-six dollars and 97/100 dollars, being the total expenses incurred by the special commissioner, S. C. Dunlap, who was appointed to make sale of the property, be and the same is hereby taxed as against the purchase price of said property, to wit: sixty-six thousand dollars, it being the sum at which said property was bid off.

3. It being made to appear that the mortgage indebtedness at the date of said sale was the sum of sixty-five thousand dollars, principal, and thirty thousand, seven hundred and twelve and 01/100 dollars interest. The said net sum of sixty-five thousand, seven hundred and fifty-three and 03/100 dollars, is hereby applied to the said indebtedness as follows:

First. To the payment of said interest, and the balance of said purchase money, after discharging said interest, said balance being $35,041.02/100 dollars is applied to the principal of said mortgage indebtedness, leaving a balance due on said mortgage debt of $29,958.98/100 dollars. To this last sum is added interest from April 30th, 1896, to Oct. 9th, 1897, at 8 % per annum, which interest amounts to $3,455.22/100 dollars, which principal and interest added together make a total sum due on said mortgage debt of $33,414.21/100 dollars, up to said Oct. 9th, 1897.

4. The amount of rents and profits as allowed on exceptions on the master's report, after deducting the amount found for supplies and findings, to wit: $2,500 dollars principal, and $891.04/100 dollars interest, making a total of $3,391.04/100 dollars, principal and interest as found for rents and profits, leaves $28,748.77/100 dollars
564 principal, and $3,717.73/100 dollars interest, which sums added together make a total of 32,466.50/100 dollars for principal and interest to 9th of Oct. 1897.

This total sum is hereby taxed with the following items of costs and expenses:

The balance costs of this cause, $182.00/100 dollars.

The fees of T. B. Felder, special master, in part, the sum of $2,500.00/100.

The fees of Julius L. Brown, special master, in part, $375.00/100 dollars.

The fees of D. O. Smith, stenographer, in part, $875.00/100 dollars.

The fees of A. L. Waldo, $200.00/100 dollars, which sum- added together, and being deducted from the said $32,466.50/100 dollars, leaves the net amount of $28,334.00/100 dollars which is hereby applied to the mortgage debt, and when so applied leaves a balance of $5,079.70/100 dollars. And for which balance it is decreed in favor of the plaintiff against the Ala. & Ga. Mfg. Co., with interest at 8 % from the 9th of Oct., 1897.

5. The former decree of this court provides that the purchaser of the property may pay the purchase price in the bonds of said defendant, to the extent that such bonds would be entitled to share in the net proceeds of the sale, if the purchase price were paid in cash; and in order to adjust the rights of the bondholders who became the purchasers and to ascertain the extent to which the bonds may be used in paying the purchase price, and to ascertain the extent to which each bondholder may share in the net proceeds of the said property, and of its income, which two sums added together, after all costs and expenses, taxable against said defendant are deducted, amount to $94,087.53/100 dollars, as of date October the ninth, 1897.

As between the bondholders themselves said sum is hereby further decreed to be subject to the further deduction as follows:

(*a.*) The costs, expenses and attorneys' fees paid out under the first sale of the property and which sale was set aside; which costs and expenses are as follows:

To Dorsey, Brewster & Howell, solicitors' fees	$1,000.00
To Abbott & Smith, solicitors' fees	1,000.00
To N. D. Denson, solicitors' fees	600.00
To J. J. Robinson, trustee	500.00
To A. E. Buck, special commissioner	400.00
To costs and advertising and com'r exp	372.00
To court costs	230.50

(*b.*) The solicitors' fees of Dorsey, Brewster & Howell, $4,000.00; solicitors' fees of B. F. Abbott, $4,000.00; the same being for services rendered as solicitors for the trustee, J. J. Robinson, and the bondholders in said cause, and the purchasers of the property, and the Galeton cotton mill, in defense of the cross-action brought by the Alabama & Georgia Manufacturing Company, for accounting for rents, issues and profits, the same appearing to be reasonable and just, the said sums are subject to a reduction of $500.00 paid
565 to said Dorsey, Brewster & Howell, and $500.00 paid to said B. F. Abbott out of funds in the hands of S. C. Dunlap, special commissioner under order of this court.

And for said balance due them said solicitors are hereby decreed and have a lien on the proceeds of said property and its income in preference to the lien of the mortgage to secure the bonds; the said balance to be and remain a lien on the property itself in the hands of the purchasers at the second sale.

6. It is further decreed that the sum recovered by the Huguley Manufacturing Company, to wit: $2,500.00 principal, and $894.04 interest, the same being for supplies and findings, is hereby taxed with the sum of $750.00, the same being the proper share of the costs taxable against the said Huguley Manufacturing Company as against the special finding in its favor; for the balance of said special finding after deducting the said $750.00, the same to be a lien on the mortgaged property in the hands of the purchasers.

7. It is further decreed that if any of the bondholders should elect not to join in the purchase of the property such bondholder shall be entitled to receive the percentage to which said bonds shall be entitled on distribution, subject of course to any payments that may have been made on the same on the former sale of the property, and subject to all proper taxation for costs and fees, and other proper adjustment according to the scope and effect of this decree. And the purchasers shall pay into court sufficient money to settle with the bondholders who do not join in the purchase if any such shall be necessary.

8. In making distribution any bonds on which a percentage has been paid in cash to former holders, and credited thereon for money paid into court under the first sale of said property, shall be controlled by the person or persons so paying the money into court for the purpose of reimbursement of such money so paid, and the person so paying said money shall be entitled to receive all dividends that such bonds may be entitled to until they are reimbursed the amount so credited on said bonds and interest thereon at 8 % per annum. And the original holders of said bonds are not entitled to receive any percentage on said bonds until after the amount so advanced is repaid to the person so advancing it.

9. The court reserves all questions as to the taxation of costs, fees and expenses, except as hereinbefore decreed and set forth in paragraph 5, *a* and *b*.

All moneys paid out, or which may hereafter be paid out on the part of said trustee, or the bondholders, or the purchasers of the said property, or the Galeton Cotton Mills or other persons for, and on account of said property, or in connection with said first or second sales, and all questions as to the right of such person or persons to be reimbursed who has paid out, or may pay out, any sum for such expense, are reserved for future decree before any distribution is made of the proceeds of the mortgaged property.

This reservation to include the right to pass on the account of L. Lanier, Esq., as agent and trustee for the bondholders in the prosecution and defense of all this litigation.

566 10. It is also represented that $65,000.00 of bonds of the Galeton cotton mills were issued for the purpose of taking the place of a similar amount of bonds of the Ala. & Ga. Mfg. Co., and that the purchasers of the property, either paid the interest on the bonds or procured it to be paid for several years.

The right of the purchaser or such other person paying said interest to be reimbursed out of the proceeds of said property before any distribution is made is reserved for future decree.

The court reserves the right to make any other and further decree in the premises, adjusting the rights of the bondholders among themselves as may appear to be equitable and just.

In open court June 4th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office June 4, 1898.

O. C. FULLER, *Clerk.*

Petition of L. Lanier for a Deed Absolute.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, ET AL.
vs.
ALABAMA & GEORGIA MFG. CO. ET AL.

The petition of L. Lanier respectfully shows:

That under a decree of this court in said case the mortgage property set out in original bill in said cause was sold on first Tuesday, the 6th day of May, 1896, and at said sale your petitioner represented such of the bondholders as were living to join in said purchase at said sale, purchased such property at and for the sum of $66,000.00, of which sum the sum of $5,000.00 was paid in cash, the balance to be paid in bonds

Your petitioner further shows that at the time of said sale there was pending before T. B. Felder, Esq., special master of said court, a reference to an account of the rents and profits of said mortgage property.

Your petitioner further shows that — the confirmation of said sale which was had June 25th, 1896, the order of confirmation provided as follows:

"An order of reference having heretofore been entered in this cause directing T. B. Felder, Esq., to ascertain and report to the court certain claims for rents, profits, wastes and conversion in respect to said property, and said investigation now being in progress before said special master, it is ordered, adjudged and decreed that should the said accounting result in a judgment in favor of the Huguley Manufacturing Company, then such judgment for any amount thereof in excess of any deficiency due by the defendants to complainant in the foreclosure proceedings shall for such excess be and remain a lien upon said property in favor of the Huguley
567 Manufacturing Company and remain a lien upon said property in favor of the Huguley Manufacturing Company as against the foreclosure at said sale or any person holding under them, and the court reserves the right to seize and order sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out and title shall be made by said commissioner to the purchaser subject to this provision."

Your petitioner further shows that at the date of said sale and confirmation no report had been made by said master, and it being impossible to determine anything as to a distribution of the proceeds of the said sale until the report of said master was made, no deed

was ever made by the commissioner to the property to your petitioner.

Your petitioner further shows that now the master has made his report, to wit: on the 9th day of October, 1897, and said report was finally confirmed by this court after disposing of exceptions filed thereto by both parties, to wit: on February 28th, 1898.

Your petitioner further shows that *by* decree rendered in said cause since said report was affirmed shows that there is a deficiency judgment in favor of the complainant in the foreclosure proceedings, and the Huguley Manufacturing Company failed to get any judgment, except for a small sum for certain property converted, to wit: $2,500.00 and interest thereon is shown by master's report, and that the record shows that the net proceeds of said sale and the net proceeds of rents, and profits combined, are not equal to the amount of principal and interest due on mortgage debt.

Your petitioner further shows that by the decree a large sum of money will have to be paid in to meet the expenses and costs as allowed by the decree, besides to satisfy those bondholders who do not join in said purchase.

Your petitioner further shows that quite a number of the bondholders are unwilling now to join in the purchase of said property but are insisting on taking their per cent. of the proceeds going to the bondholders in cash and are unwilling to furnish the necessary cash to comply with said decree and your petitioner will therefore be compelled to raise the money to pay the expenses, costs and fees, and those bondholders who require the cash in the distribution.

Therefore your petitioner prays the court for an order requiring the commissioner to make to him as trustee or to such person or persons as he may direct, a deed absolute without any reservation as provided in said order of confirmation as to affixing a lien thereon or in favor of Huguley Manufacturing Company and free of any lien on the property in favor of Dorsey, Brewster & Howell, and B. F. Abbott, solicitors in the cause, on your petitioner complying with the decree in said case by paying into the court enough money as may be necessary to pay all the expenses, fees, costs and such bondholders as may decline to turn in their bonds as payment on the purchase, and require payment of what is allotted to each, and he will ever pray, etc.

And that the court will pass such other and further order
568 in the cause as to the court may seem meet and proper in the premises.

DORSEY, BREWSTER & HOWELL AND
B. F. ABBOTT, *Solicitors for L. Lanier.*

Read and considered. Let this petition be filed. It is ordered that the above-stated application be set for hearing at 10 o'clock on the 23 inst. Let copy be served on the Huguley Mfg. Co., or its counsel. This September 22, 1898.

WM. T. NEWMAN, *Judge.*

Service of a copy of the within petition and order is hereby acknowledged. Sept. 22, 1898.

W. R. HAMMOND,
Att'y for Huguley Mfg. — and as of Record.

Filed in clerk's office 22 Sept., 1898.

O. C. FULLER, *Clerk.*

Answer to Petition of L. Lanier for Deed, &c.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, etc.,
vs.
THE ALA. & GA. MFG. CO. ET AL. } In Equity.

In the matter of the petition of L. Lanier, filed in the above-entitled cause on the — day of ——, 1898, praying that the decretal order of confirmation of 25th day of June, 1898, be modified, etc.

Comes The Huguley Manufacturing Co., one of the defendants in said petition and for answer to the same, says:

1. It admits that the mortgaged property was offered for sale on the 6th day of May, 1896, and it avers that said L. Lanier bid at said sale the sum of $66,000.00 professing to act in making said bid "as trustee for the holders of the bonds of the Ala. & Ga. Mfg. Co.," and that said property was knocked off to him as such trustee for the sum of $66,000. It denies that said Lanier professed to represent only a part of said bondholders, but aver- upon advice that as he bid generally as trustee for the bondholders his bid was as trustee for all the bondholders.

2. Respondent admits that at the time of the sale a reference was pending for an account of the rents and profits. It further admits that the confirmation of the sale (which it avers was only partial) was had June 25, 1896, and that the court in its decree then rendered, reserved a lien in favor of this defendant as set out in said petition.

3. This defendant admits that at the date of the sale and confirmation no report had been made by the special master and that
569 it was impossible for them to determine anything as to the distribution of the proceeds of said sale "until the report of said master was made," but it denies that either of said facts furnish any reason for the failure of said purchasers to comply with their bid and they further deny that the failure to make a deed to the purchaser resulted from either of said facts as is impliedly alleged in said petition. The defendant, on the contrary, avers that notwithstanding the pendency of said reference this court, in said

order of confirmation, directed the commissioner, who made the same, to execute a deed to the purchasers of the mortgaged property "upon the purchasers complying with the terms of said sale." That this defendant resisted said decree of confirmation on the ground of the pendency of said reference and asked that the sale be postponed until after the coming in of the report of the master, and offered to bid at the sale if the same should be postponed.

But said purchasers insisted upon said decree of confirmation as the same was drawn, and that the same should be tendered without any postponement or delay. Wherefore, this defendant says that said Lanier is not in a position to insist that the pendency of said reference afforded any reason for not complying with said bid, and defendant avers that the true reason why a deed was not made to said purchaser- as the commissioner was required to do by the terms of the decree of confirmation was that said purchasers had not complied with their bid.

4. Defendant admits that the master has made his report on said reference, that said report has been confirmed, and that the amount ascertained thereby to be due the Huguley Mfg. Co. for rents and profits has been applied by this court to the payment *pro tanto* of the alleged deficiency which the court then proceeded at the instance of the solicitors of said bondholders to ascertain. That said deficiency was so ascertained by applying to the mortgage debt the amount of said bid, to wit, $66,000, less $5,000, which had been paid into court in cash, and certain charges said decree assuming as a predicate that said bid had been fully complied with. That in and by said decree which was rendered of date June 4th, 1898, and which is here referred to as a part of this answer, and which will be introduced as evidence on the hearing of this motion, the court at the instance of solicitors for said bondholders dealt with the sum bid as if it had been paid and was subject to the order of the court. Wherefore defendant says that the said Lanier should not now be heard to insist that said bid has been complied with.

5. This defendant further states that the order fixing a lien on said property for the security of the Huguley Mfg. Co., if displaced, would leave this defendant without security for any sum that might be found ultimately due it if on appeal the United States court of appeals should reverse the decree of this court overruling defendant's exceptions to the master's report, and should reverse the ruling of this court applying the sum awarded to Huguley Mfg. Co. by the decree confirming said master's report, to the alleged deficiency in the mortgage debt. That this defendant has prepared its assignments of error for the purpose of taking said case up for re-
570 view by appeal and the same would have been tendered before this to the court but for the fact that the solicitors for this respondent reside in different States and have not yet been able to hold a conference with reference to said assignments. That as evidence of the intention to appeal we will, on the hearing of this mo-

tion, show the said assignment to the court with the suggestion they will be filed within the next few days.

6. For further answer this defendant says that the bondholders of Ala. & Ga. Mfg. Co., under the name of the Galeton cotton mills, have been in possession and operating the mortgaged property (a cotton mill) without any right or title and without paying said bid and have received the rents and profits of said property since the date of said sale. That they have never accounted for said rents and profits; and this defendant admits that they are not entitled to the relief prayed in said petition unless they shall offer in connection therewith to respond for such rents and profits.

7. This defendant states that as disclosed by said petition said Lanier does not represent all the bondholders, as trustee, for whom he bid at said sale, and to whom, as trustee, the property was knocked off. That it is sought in and by said petition to substitute new and different purchasers instead of those who bid for said property at the sale. Wherefore, this defendant says that said petition should not be granted.

8. For further cause against the granting of said petition this defendant states to the court that by the original decree of sale under which said property was sold on May 6th, 1896, the terms of sale were fixed as for cash, or to be paid in bonds of the Ala. & Ga. Mfg. Co., with $5,000 in cash. That in and by said petition it is sought to change the terms of said sale into a sale on a credit extending from the date of sale down, to at least the present time, said bondholders in the meantime enjoying the rents and profits of the property; and further to change the terms of the order confirming said sale by displacing the lien of this petitioner so as to enable Lanier to mortgage the property to raise the purchase-money, whereas, by the terms of the sale, bidders were not invited, under such advantageous conditions.

9. For further cause against said petition defendant says that said Lanier is in contempt of this court in this: 1st. That as disclosed by this petition he bid for persons for whom he was not authorized to bid at said sale; 2nd, that as shown by this answer he and some of the bondholders for whom he was possibly authorized to bid have asked for and obtained orders having for their necessary predicate the assumption that said bid had been complied with, without informing the court of such non-compliance; 3rd, that he has waited since May 6th, 1896, to the present time before informing the court of his non-compliance with said sale. Wherefore this defendant says that said Lanier should not be heard to ask for the relief prayed for in said petition.

And having answered this, defendant prays that said petition may be denied and that defendant be discharged with its reasonable costs.

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J. M. CHILTON,
W. R. HAMMOND,
J. C. REED,
Sol'rs — Def't.

Filing.—Filed in clerk's office 4 day of Oct., 1898.

O. C. FULLER, *Clerk.*

Decree upon Petition for Deed Absolute.

U. S. Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } In Equity. No. 360.

Petition for order directing the commissioner to make deed to the property involved in litigation upon compliance with the terms of the purchase.

This matter came on to be heard and was argued by counsel, and thereupon it was considered, ordered and decreed as follows:

It appearing that the first sale of the property involved in this case was on the 6th day of September, 1892; that L. Lanier, *et al.*, for and on behalf of the bondholders bid in said property at and for the sum of $10,000.00 and paid into court on said purchase the sum of $10,000.00, which sum was distributed under and by order of this court before any notice of an appeal was given, and before any reversal of the decree under which said sale was made.

And it further appearing that at the second sale of said property the said L. Lanier, acting for and on behalf of said bondholders, again bid in the property for the sum of $66,000.00, and paid into the hands of the commissioner the sum of $5,000.00, which sum has also been distributed under and by order of this court.

And it further appearing to be equitable and just that the purchasers should have credit on said purchase for said sum of $10,000.00, with interest thereon from Sept., 1892, the date of the first sale, as well as said $5,000.00 paid at second sale, and that he should be required to pay into court only the balance of said purchase-money, to wit, $66,000 after the sum is reduced by said $10,000 and interest, and $5,000 as above.

The purchasers being now desirous of completing their purchase, and it being the opinion of the court that said purchase should be completed, and that a title free from all liens and encumbrances be made to the purchaser, upon his compliance with the terms of his bid, and that such title should be made as of date May 5th, 1896.

And it further appearing by decree of confirmation rendered June 25th, 1896, that it is provided among other things as follows: "An order of reference having been entered in this cause directing T. B. Felder, Esq., to ascertain and report to the court certain claims for rents, profits, waste and convertion, in respect to said property, and said investigation being now in progress before the special master, it is ordered adjudged and decreed that

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should said accounting finally result in a judgment in favor of the Huguley Mfg. Co., then for such judgment, or any amount thereof in excess of any deficiency, due by the defendant to said complainants in the foreclosure proceedings, shall for such excess be, and remain a lien upon such property in favor of said Huguley Mfg. Co., as against the foreclosure at said sale, or any person holding under them, and the court reserves the right to seize and order a sale of such property, for the purpose of satisfying such amount so found to be due as hereinafter set out, and title shall be made by said commissioner to the purchaser, subject to the following provision."

And it appearing that owing to the delay in the determination of the questions submitted to the special master, it has been impracticable to pay for said property in bonds of the Ala. & Ga. Mfg. Co., as provided in the decree of foreclosure, and whereas the said Huguley Mfg. Co. has given notice of an intended appeal of said cause to the circuit court of appeals, which will render it impracticable under such notice to ascertain definitely to what extent the bonds of the Ala. & Ga. Mfg. Co. could be used for the purpose of paying the purchase money as provided in said original decree, and this court being of the opinion that it is for the best interests of all concerned, that said property should be settled for by the purchaser, and a full and complete title be made by the commissioner to said purchaser, or to such person as he may direct, free from all liens, claims or demands in favor of any person or corporation, party to this record.

And it further appearing that the said Huguley Mfg. Co. has failed to obtain any decree in the cause which could be operative as against the property under the provisions of said decree of confirmation, it is therefore ordered that the decree of confirmation be modified with respect to the provisions fixing a lien on the property in favor of the Huguley Mfg. Co., as to any amount it might ultimately be decreed to be entitled to, and that the before-recited provisions of said decree of confirmation be set aside, and whatever rights the said Huguley Mfg. Co. may hereafter be adjudged to have, and any claim that they may have, or may hereafter be adjudged to have, be transferred to the net proceeds of the sale of the property, to be paid into the registry of this court, as hereinafter specified.

And it is ordered and decreed that the purchaser do pay into the court within forty days from this date the whole of the balance of the purchase-money of said property, to wit, $48,433.36/100 dollars principal, with interest thereon from the 6th of May, 1896, at 7 per cent. up to date of payment, the same being the balance of the purchase money, and interest, less $10,000.00 paid into court at the first sale, with interest thereon at 7 per cent., and less $5,000.00 paid in cash at the time of the second sale; and that upon certificate
573 of the clerk of the fact of such payment, thereupon the commissioner, S. C. Dunlap, Esq., do execute and deliver to said purchaser or such person as he may designate, a deed to the prop-

erty sold, and the purchaser shall thereupon become vested with a good and clear title to said property, as of date of sale, and with the same effect in all respects as to all persons whatsoever, as if said sale had been completed, and the property conveyed to him upon the date thereof, May 5th, 1896.

And it is further decreed that all claims of the Huguley Mfg. Co., or other parties to this litigation, shall be transferred from said property to the net proceeds of said sale as hereinafter mentioned, and the said net proceeds alone be answerable for all claims, legal or equitable, if any so exist, in favor of said Huguley Mfg. Co., or other persons, parties to this litigation, growing out of use and occupation of said property since the first sale, as well as for the claims in favor of Dorsey, Brewster & Howell and B. F. Abbott, Esq., solicitors for the complainants in said litigation. It being the intention of this decree that this court do release said property from all claims of all parties to this litigation of whatsoever nature, and to transfer such claims, if any exist, to the fund of the court.

The clerk of this court, O. C. Fuller, will pay to the following persons the following amounts respectively, and take their receipts therefor in full settlement of such claim, the same having been by previous decree of this court adjudged to be prior liens on said proceeds in preference to all other claims, to wit:

To Dorsey, Brewster & Howell	$3,500.00
To B. F. Abbott	3,500.00

and the balance of other items of costs and expenses, provided for especially in decree of this court dated 4th June, 1898, to wit, such balance of costs, fees as may be due to persons heretofore decreed to be entitled to payment out of the fund brought into court in preference to the bonds and not taxed against the amount of the recovery in favor of Huguley Manufacturing Co. against Galeton Cotton Mills for supplies and findings.

The balance of said fund so paid into court after said preferred liens and costs and expenses are paid shall be held in the registry of the court subject to further orders and decree to be made.

The court reserves the right to make any other and further decree in the premises that may be proper with respect to the disposition of the balance of said fund, after the payment of the items of fees, costs and expenses, as hereinbefore specified.

This October 15th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 15th day of Oct., 1898.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy*.

574 *Motion to Set Aside Decree of* 15 *Oct.*, 1898.

U. S. Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } In Equity. No. 360.

The Huguley Manufacturing Company comes now, and moves the court to open and reconsider the order passed in the above matter on October 15, 1898, and for cause thereof shows as follows:

1. Your petitioner was not represented by counsel on said hearing, and could not be because its counsel on whom it relied, W. R. Hammond, was actually engaged in the trial of a case in the superior court of Fulton county when said matter was heard, and said order was passed, and was not and could not be presented at the hearing of the same.

2. Because said order recites in the body of it, as a conclusion and finding of the court, that the Huguley Mfg. Co. has failed to obtain any decree in the cause which could be operative as against the property, under the provisions of the decree, when the truth is said Huguley Mfg. Co. had obtained and was entitled to an order fixing a lien on said property for the amount of its recovery for supplies and findings.

3. Because said order fails to provide any means or method by which the recovery of the Huguley Mfg. Co. for the amount found in its favor for supplies and findings can be collected, and fails to require the same to be paid into court.

4. Because it orders $7,000.00 to be paid to counsel for the Galeton Cotton Mills as fees, out of the fund ultimately liable for whatever amount may be awarded to the Huguley Mfg. Co., and recites that said claim for attorneys' fees has priority over the claim of the Huguley Mfg. Co. for rents and profits.

5. Because in many other respects said order shows on its face that it was improvidently granted on the *ex parte* application of counsel for only one side.

W. R. HAMMOND,
Movant's Att'y.

Order.

On considering the foregoing petition, it is ordered that the Galeton Cotton Mills or its counsel show cause before me on the 12th day of November, 1898, why the prayer of the petition should not be granted. Let a copy be served on opposing counsel.

This November 5, 1898.

WM. T. NEWMAN,
U. S. Judge.

575 Service.—Service of a copy of the foregoing petition and order is hereby acknowledged. November 10, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Counsel for Galeton Cotton Mills.

Filing.—Filed in clerk's office Nov. 11, 1898.

O. C. FULLER, *Clerk.*

Answer to Motion to Set Aside Decree of 15 *Oct.*, 1898.

U. S. Circuit Court for the Northern Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } In Equity. No. 360.

And now come J. J. Robinson, trustee, and the Galeton Cotton Mills, and answers said motion as follows:

1. On the morning of the 15th of October, 1898, Judge W. R. Hammond informed B. F. Abbott, Esq., one of the counsel for respondents, that he, Hammond, was engaged in the superior court and would be for about an hour of the session, that he desired said Abbott to check the matter of passing on the decree in the U. S. circuit court, in above-stated matter, as he, Hammond, had promised Judge Chilton to see the form of the decree before it was signed. Said Abbott told said Hammond, as counsel for the Huguley Co. that he would so check the matter for an hour. P. H. Brewster and said Abbott were in said U. S. court at the opening, and said Abbott stated to the court the conversation that he had had with said Hammond as attorney for the Huguley Mfg. Co. Said Abbott and Brewster remained in court until after 12 o'clock, when said Abbott telephoned said Hammond at the superior court to know when he would be in the U. S. court. Said Hammond replied that he could not tell exactly, and repeated to said Abbott that his promise was to see the form of the decree, and asked said Abbott to send the decree over to the superior court, and he would read it. Said Abbott stated to the court the message he had received, and he took the decree in person to Judge Hammond, and he, Hammond, read it. And the only suggestion that said Hammond made was that the time allowed the purchaser for paying in the money on his purchase was too long, and requested said Abbott to state to the court that view which said Abbott did.

The court signed the decree just as it was prepared with the exception that the decree provides for the money to be paid into the registry of the court instead of into the hand- of S. C. Dunlap, Esq., the special commissioner, as in the original draft.

Said Hammond asked no further postponement on account of hi engagements, and said Abbott understood said Hammond to acqui esce in the decree as being the judgment which the court would render as the result of the hearing of said matter theretofore had in open court.

576 2. Respondents deny that the Huguley Co. has ever obtained any decree which could be operative against said property sold by the commissioner for the reason that the mortgage debt, principal and interest, was and is largely in excess of the net proceeds of said sale and the amount of rents and profits, and the amount of damages for property converted in the aggregate.

3. Respondents deny that the decree fails to provide any means by which the special finding in favor of the Huguley Mfg. Co. for supplies and findings converted shall be paid, but on the contrary the decree provides that all claims of every kind and description in favor of said Huguley Mfg. Co. shall be transferred to said fund in court.

4. This court decreed that on June 4th, 1898, that the attorneys' fees of Dorsey, Brewster & Howell, and B. F. Abbott, Esq., were and are a prior lien on the proceeds of the property of the Ala. & Ga. Mfg. Co., and said decree of Oct. 15th, 1898, reaffirms said former decree and directs that said counsel fees be paid, which is according to the practice and the law in such cases.

And having fully answered, respondents pray said motion be denied, and that the costs of the same be taxed against the Huguley Mfg. Co.

DORSEY, BREWSTER & HOWELL AND
B. F. ABBOTT, *Solicitors for Respondents.*

UNITED STATES OF AMERICA, }
Nor. Dist. Ga. }

Appeared B. F. Abbott before me, the attesting officer, and makes oath that the statements of fact contained in the first paragraph of the foregoing answer are true.

B. F. ABBOTT.

Sworn to and subscribed before me Nov. 12, 1898.

GEO. S. BARNARD,
Deputy Clerk U. S. Cir. Court.

Filing.—Filed in clerk's office Nov. 12, 1898.

O. C. FULLER, *Clerk.*

Order Modifying Decree of 15 *Oct.*, 1898.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MFG. COMPANY.

Motion of Huguley Manufacturing — to modify order of October 15, 1898.

Upon consideration of the foregoing petition and answer thereto, it is ordered that the decree of October 15, 1898, be and the same is hereby amended and modified as follows:

577 By adding after these words: "and it further appearing that the said Huguley Manufacturing Company has failed to obtain any decree in the cause which could be operative as against the property under the provisions of said decree," these words: "except as to the amount found in favor of the Huguley Manufacturing Company for supplies and findings which are hereinafter provided for." And amending said decree further by inserting in said order after the words: "B. F. Abbott $3,500," and the words "and the balance of other items," these words: "and to the Huguley Manufacturing Company the sum, which by the decree of June 4th, 1898, was decreed in favor of said company for supplies and findings and interest therein provided, less the sum charged in said decree upon said fund as costs and expenses."

Done in open court, this November 12th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing.—Filed in clerk's office 12th day of Nov., 1898.

O. C. FULLER, *Clerk.*

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING COMPANY, and WILLIAM T. HUGULEY, and The Alabama & Georgia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, etc.
} In Equity.

Intervention by the Huguley Mfg. Co. for accounting for rents and profits. Reference to master, etc.

Appeal to United States circuit court of appeals for the fifth circuit, at New Orleans, La.

The Huguley Manufacturing Company and The Alabama & Georgia Manufacturing Company, defendants in the original bill in the above-entitled cause, and interveners in the petition filed in the said cause, praying for an accounting for rents, issues and profits etc., conceiving themselves aggrieved by the orders and decrees entered in the said cause, on to wit, the 28th day of February, 1898 4th day of June, 1898, and on the 15th day of October, 1898, do hereby appeal from the said orders and decrees, to the United States circuit court of appeals for the fifth circuit, at New Orleans, La., and they pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings and papers, upon which the said order and decree were made, duly authenticated, may be sent to the United States circuit court of appeals, for the fifth circuit, at New Orleans, La.

578 And the said appellants also pray, that certain original books and papers, which are more particularly identified and described in the affidavits of Wm. R. Hammond, and John M. Chilton, and Wm. T. Huguley, herewith filed, be also transmitted to the said court of appeals, for the fifth circuit, at New Orleans, La., for the inspection of the said court, for the reasons assigned in the said affidavits.

JOHN M. CHILTON,
W. R. HAMMOND,
Sols. for The Huguley Mfg. Co. et al., Appellants.

Order Allowing Appeal.

It is ordered that the foregoing petition for appeal be allowed, counsel for appellees objecting to its being allowed as to the decree of Feb'y 28, 1898, on the ground that it was rendered more than six months before this petition for appeal, and to the decree of Oct. 15, 1898, on the ground that appellants have accepted the fruit of the decree.

Dec. 2, 1898.

WM. T. NEWMAN,
U. S. Judge.

Service.—Due and legal service of a copy of the foregoing petition and order is hereby acknowledged.

Dec. 2, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Solicitors for Appellees.

Filing.—Filed in clerk's office Dec. 3, 1898.

O. C. FULLER, *Clerk.*

Assignment of Errors.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING COMPANY, and William T. Huguley, and The Alabama & Georgia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, etc.
} In Equity.

Intervention by the Huguley Mfg. Co. for accounting for rents and profits. Reference to master, etc.

Appeal to United States circuit court of appeals for the fifth circuit, at New Orleans, La.

The Huguley Manufacturing Company and William T. Huguley, and the Alabama & Georgia Manufacturing Company, having prayed and taken an appeal in the above-entitled cause, now jointly and severally assign the following errors:

579 I. The court erred in the decree of the 25th day of June, 1896, in overruling the objections incorporated in the answer

filed by the Huguley Manufacturing Company to the rule to show cause why the sale of the 6th day of May, 1896, should not be confirmed, and in confirming the said sale in advance of an ascertainment of the results of the reference then pending before the special master, T. B. Felder, Jr.

II. The court erred in the decree of the 25th day of June, 1896, in confirming the said sale in advance of a compliance of the purchasers with the terms of the said sale of the 6th day of May, 1896, said decree affirmatively showing that the terms of sale had not been complied with.

III. The court erred in confirming the report of the special master, in this:

That the said report discloses on its face, that said master did not himself examine into the proper receipts and disbursements incident to the custody and operation of the mortgaged property, as required by the decretal order of reference; and, that no such examination was made by any other person, at the instance of or under the direction of the special master.

IV. The court erred in confirming the said report of the special master, in this:

That said master failed to compel the accounting respondents to file their accounts as provided by the 79th rule of Equity Practice.

V. The court erred in confirming the report of the special master, in this:

That the master, in making the said report, ignored the 76th rule of Equity Practice.

VI. The court erred in overruling exception No. 1, filed to the report of the special master, in this:

That said report discloses on its face, that the special master adopted as the rule of liability on the part of the respondent, the accounting party, (designated in said exception No. 1, and hereinafter referred to, for convenience, as "The Galeton Cotton Mills"), during the time of its occupancy and possession of the property in dispute, that it was chargeable only with the profits "actually earned," or which would have been earned but for its "wilful default."

Whereas, the true rule of liability, as appellants insisted then, and now insist, was, that the appellee, The Galeton Cotton Mills, was liable to account to the Huguley Manufacturing Company, for such profits as would have been earned by the exercise of "ordinary and reasonable diligence," on its part.

VII. The court erred in overruling exception No. 4 to the report of the special master.

The master was in error, in holding and finding that the amount of "interest," charged by the officers and agents of the Galeton cotton mills against the corporation, under the general charge of "balance interest on account," being $17,196.24, should be reduced to only $14,021.27, and allowing the last-named sum to stand as a charge against the Galeton cotton mills in favor of their agent and
580 treasurer, Horace S. Sears, and thus operates as a charge against appellant in the accounting between it and the Galeton cotton

mills. Appellant claiming and contending that no evidence was furnished to the master on which he could allow the same, and that the only interest charge which could properly be allowed was "interest on working capital," which, the evidence showed, would not exceed $30,000.00 principal, and that the interest on this sum, at 7 per cent. would be only $7,700.00 for the period of accounting.

Appellant contends that an additional amount should have been allowed in its favor against the Galeton cotton mills, on this account, of $6,321.47.

VIII. The court erred in overruling exception No. 5, to the report of the special master:

The master was in error in holding and finding that the charges for interest on "datings," contained in the account sales, rendered by N. Boynton & Co., to the Galeton cotton mills, to wit, to the amount of $14,108.35, was the proper charge in favor of the Galeton cotton mills against appellant. Appellant contends, that this amount so charged should not have been allowed, nor any part of it, and that the whole amount of it should have been added to the amount found in favor of appellant, The Huguley Manufacturing Company, against The Galeton Cotton Mills.

IX. The court erred in overruling exception No. 6, to the report of the special master:

The master was in error, in holding and finding that there was no excess of "commission" charged by N. Boynton & Co., the sales agents of the Galeton cotton mills, on account of sales of duck and other products of the mills, said charge having been five per cent. (5 %) on the gross sales, or $30,626.19, in the aggregate.

Whereas, appellant contends, that no more than 3½ per cent. should have been allowed as a credit to the Galeton cotton mills on account of said sales, or the gross sum of $21,438.33, which would make an additional amount of $9,187.88, that should have been found by the special master in favor of appellant against the Galeton cotton mills.

X. The court erred in overruling exception No. 7 to the report of the special master:

The master was in error, in holding and finding that no amount should be allowed to appellant against the Galeton cotton mills, on account of "shortage in cotton," or the difference in the amount of cotton bought and paid for by the Galeton cotton mills, and the amount actually opened and consumed by the mills, as shown by their own books, said amounts being as follows:

Actual lbs. of cotton bought and paid for.....	5,408,341 lbs.
Actual lbs. of cotton opened and consumed.....	5,283,028 lbs.
Difference or balance unaccounted for.....	125,313 lbs.

Appellant contends that there was no evidence showing that this cotton was accounted for, and that the special master should
581 have found in its favor, against the said Galeton cotton mills,

the value of the same, at 8¼ cts. per lb., or $10,338.32 in the aggregate.

XI. The court erred in overruling exception No. 8 to the report of the special master:

The master was in error, in finding and holding that the valuation of $33,737.28, credited by the Galeton cotton mills for the goods on hand at the end of the period of accounting, was correct valuation, and that no additional charge should be made against the Galeton cotton mills, in favor of appellant, on this account.

Appellant claims and contends, that the evidence shows clearly that the market value of the goods on hand, at the end of the period of accounting, was as follows:

On hand, April 30th, 1896, cotton duck, 273,050 lbs.	
Of which, in Boston (fr't prep'd) 117,832 lbs. 12½	$14,729.00
Of which, in West Point, Ga., 155,219 lbs. 12½	19,402.25
Fr't prepaid to Boston, on former lot	707.60
Additional value of converted goods	850.00
Goods at mill, unbaled, 1,691 lbs. 12½	211.37
Cotton at mill, in process, 10,000 lbs. 12½	1,250.00
Other stock (cotton) waste, etc. 24,207 lbs. 2 cts.	484.14
Total net value, as per testimony	$37,633.76
Deduct valuation, as per Lanier's estimate	33,737.28
Leaving a net balance or deficit, on this account of..	$3,896.48

which should have been charged in favor of appellant against the Galeton cotton mills, in addition to the amount allowed of to wit, $33,737.28.

XII. The court erred in overruling exception No. 10 to the report of the special master:

The master was in error, in holding and finding that no amount should be allowed in favor of appellant, The Huguley Manufacturing Company, against the Galeton cotton mills, on account of "overcharge on cotton," bought and charged against the Galeton cotton mills by W. C. & L. Lanier. Appellant claiming and contending, that the special master should have allowed, on this account, the sum of $50,359.52.

W. T. NEWMAN,
U. S. Judge.

XIII. The court erred in overruling exception No. 10 (*a*), to the report of the special master:

The master was in error in holding and finding that appellant should have shown the amount and date of each purchase made by the Galeton cotton mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively within the knowledge of the Galeton cotton mills and of its officers and

agents to show the amount and date of each of these purchases; and when appellant had shown the date when they were charged, and had shown, by abundant evidence, the market prices on those days.

582 XIV. The court erred in overruling exception No. 11 to the report of the special master:

The master was in error in holding and finding that there was no liability on the part of the Galeton cotton mills to The Huguley Manufacturing Company, appellant, on account of its failure to sell the duck manufactured by the mill at the full "market price" of the same. The evidence showing, as appellants then contended and now contend, that the cotton duck was sold at an amount less than its market value, in a large sum, to wit: $96,641.23.

XV. The court erred in overruling the 14th ground of exception to the report of the special master:

Appellants then contended and now contend, that the special master erred in admitting and using as original evidence, the "account of sales" made by N. Boynton & Co., to the Galeton cotton mills, and in using the same as being a correct report of sales made by N. Boynton & Co., of the product of the mill, the testimony not having been sufficient, as appellant contended and now contends, to show that these accounts of sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co. on account of the sale of the product of the mills during the period of accounting.

Counsel for appellant, The Huguley Manufacturing Company, did not object to these accounts of sales going in evidence as showing in connection with the testimony of L. Lanier, the amounts of money actually paid by N. Boynton & Co. to the Galeton cotton mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for appellant contend- and now contends, that they correctly represented the actual and proper receipts and disbursements on that account.

16. The court erred in overruling exception No. 12 to the report of the special master, in this:

The master was in error in respect to his use of the "journal" and "ledger," under the circumstances stated in said 12th exception, said circumstances being as follows: Counsel for appellant, when they were first offered, objected to the admission in evidence of the books of the Galeton cotton mills, to wit: the journal and ledger, on the grounds, that they had not been shown to be the original books, or books of original entry of the mills, and appellant offered evidence that they were too fresh to have been original books, and had no check-marks upon them as such books of original entry, in daily use, commonly have. The books were at first ruled in by the master. Afterwar dcounsel for appellant, The Huguley Manufacturing Company, offered further evidence, and showed that the

"water-marks" on the paper, of which the books were made, bore the date of "1894" imprinted on the face of same; whereas, the entries on the books purported to have commenced in "1892" and appellant renewed its motion to exclude the books on the introduction of this new evidence. But, nevertheless, the master, in making up his report, has used and relied upon these books, and has
583 had them audited (in parts) by A. L. Waldo, the expert accountant employed by him, and has based his report upon the contents of these books.

Appellant contended and now still contends, that these books should not have been used or considered by the master, at all in making up his report, but that the report should have been made up from the other evidence that was before the master, excluding from consideration, entirely, these books.

XVII. The court erred in overruling the 13th ground of exception to the report of the special master.

Appellant then contended and now contends, that the special master erred in admitting over the objection of counsel for the appellant, The Huguley Manufacturing Company, the testimony of L. Lanier, that the Galeton cotton mills, during the period of its operation, from the 6th day of September, 1892, to the 6th day of May, 1896, made a "net loss" of $4,654.60; the objection to said testimony being that it was the result of a calculation made by a person or persons other than the witness, or any witness, from the books of the mills, and that the books were the best evidence of their contents, and of any loss or profit made or sustained by the mills.

Said evidence was as follows:

Q. "I will get you to state to the court the exact financial result of the operation of this mill for three years and a half; the period it was operated by the Galeton cotton mills, from the first sale to the last."

A. "The stock we had on hand the 30th day of April, 1896, was sustained at 11½ cents per pound, and that leaves a loss in the operations of the mill, for that time, of $4,654.60. We estimated the goods on hand, and got that result."

(By the MASTER:)

Q. "For what period of time?"
A. "From September 19th, 1892, to April 30th, 1896."
Q. "That covers the entire period?"
A. "Yes, sir."
Q. "That was a loss?"
A. "Yes, sir. $4,654.60."
(Record, p. 1362.)

Q. "This result is arrived at by you taking from the results of figures made by others?"
A. "Yes, sir."
(Record, p. 1441.)

The books having been excluded by the master, as evidence, this testimony, showing the result of a calculation or estimate "profit or loss," as based on receipts and expenditures, as shown by these books, should have been excluded from evidence, and should not have been used by the master in making up his report, as correctly representing the result of the operation of said mill during the period of accounting.

584 Counsel for appellant claimed then and claim now, that this was a fundamental error that vitiates the entire finding of the master, and that he should have been directed by the court to reconsider the evidence and submit a new report in the case, excluding from consideration, entirely, the books which were excluded by him.

XVIII. The court erred in the decree appealed from, dated the 4th day of June, 1898, in applying to the payment of the alleged deficiency on the mortgage debt, so much of the amount which, on confirmation of the report of the special master, had been ascertained to be due as "rents and profits" in favor of the Huguley Manufacturing Company. Such application deprived the Huguley Manufacturing Company of its property, without due process of law, and was thus violative of the fifth amendment of the Constitution of the United States.

XIX. The court erred in said decree of the 4th day of June, 1898, in this:

The amount of the rents, issues and profits, ascertained to be due and owing to the said Huguley Manufacturing Company, by the decree of the 23rd day of February, 1898, confirming the master's report, and in which the sum of $36,210.99 was ascertained to be so due in favor of appellant, was the property of the Huguley Manufacturing Company, and no part thereof could lawfully be applied to the mortgage indebtedness due by the Alabama & Georgia Manufacturing Company.

XX. The court erred in said decree of the 4th day of June, 1898, in granting the petition of the Galeton cotton mills to apply the amount found in favor of the Huguley Manufacturing Company to the balance due by the Alabama & Georgia Manufacturing Company on the foreclosure decree, or the deficiency thereof; because, the Huguley Manufacturing Company was not liable for, and never assumed to pay, any part of the indebtedness secured by the mortgage foreclosed in this cause. And the court erred in applying its property to the payment of any part of the said debt.

XXI. The court erred in granting said petition of the Galeton cotton mills, because the indebtedness by the Galeton cotton mills to the Huguley Manufacturing Company, for rents and profits, and the debt of the Alabama & Georgia Manufacturing Company to the bondholders, were owing in different rights, and could not, therefore, be set off the one against the other.

XXII. The court erred in applying to said alleged deficiency de-

cree the said debt due by the Galeton cotton mills in favor of the Huguley Manufacturing Company for rents and profits, in this:

That no deficiency decree, and no judgment or decree for said alleged deficiency, had ever been rendered.

XIII. The court erred in said decree of the 4th day of June, 1898, in applying the said debt for rents and profits due and owing to the Huguley Manufacturing Company by the said Galeton cotton mills, to said alleged deficiency, in this:

That no proceeding had ever been instituted in this cause for the purpose of ascertaining what deficiency, if any, existed, after crediting the amount for which the property was sold.

585 XXIV. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, as aforesaid, in this:

That there had not been, prior to the said decree of the 4th day of June, 1898, any confirmation of sale of the said property, the only decree, in that respect, namely, the decree of the 25th day of June, 1898, disclosing on its face, that the purchasers had not then complied with the terms of said sale. And there was, subsequently, down to the rendition of said decree of the 4th day of June, 1898, no evidence of any such compliance.

The petition of L. Lanier, filed on the — day of October, 1898, disclosed that the terms of the said sale (of the 6th day of May, 1896) had not been complied with, when the decree of the 4th day of June, 1898, was made and entered.

XXV. The court erred in the decree of the 4th day of June, 1898, in applying said rents and profits, ascertained to be due and owing in favor of the Huguley Manufacturing Company, to said alleged deficiency, in this:

That neither of the appellants had its day in court in any proceeding instituted for the purpose of judicially ascertaining the existence and amount of any such alleged deficiency. And the ascertainment in said decree of the 4th day of June, 1898, of said alleged deficiency was without due process of law and violative of the fifth amendment of the Constitution of the United States.

XXVI. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, due and owing to the Huguley Manufacturing Company, to the said mortgage debt, in this:

That neither in the bill, nor in any other proceeding, had the bondholders or their trustee or trustees ever intercepted or ever attempted to intercept the said rents and profits, or to condemn them to their mortgage debt.

XXVII. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits to the said alleged deficiency, in this:

That, by the sale of the mortgaged property, the lien of the mortgage, as security, was exhausted, and any balance was for a mere

money demand, enforceable only by execution, when properly reduced to a decree for a deficiency.

As mortgagees, neither said bondholders nor their trustee had any lien nor any right to any rents and profits theretofore earned, or for which any person might be liable to account to the mortgagor or its assignee.

XXVIII. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, ascertained in favor of the Huguley Manufacturing Company, to the said mortgage debt of the Alabama & Georgia Manufacturing Company, in this:

The bill and subsequent proceedings in this cause show that the debt secured by the mortgage foreclosed and the mortgage itself constitute contracts governed by the laws of Georgia; that
586 long prior to and down to the date of the execution of the said mortgage and the creation of the debt secured thereby, it had been and was the law, and had become, first, by the decisions of the supreme court of the State of Georgia, and next, by statutory enactment of the legislature of the State of Georgia, a "rule of property" that a mortgage constituted only a lien upon the mortgaged property, passing no title; and that the mortgagee, in no event could become entitled to the rents and profits of the mortgaged property.

And the said law was, at the time of the said decree of the 4th day of June, 1898, and still is the law of the State of Georgia.

XXIX. The court erred in the decree of the 4th day of June, 1898, in making the said application of the rents and profits due and owing to the Huguley Manufacturing Company, to the said mortgage debt, in this:

That to apply the said rents and profits to the payment of any part of the mortgage debt, would be to impair the obligation of the contract between the Alabama & Georgia Manufacturing Company, and Robinson, Yancey and Huguley, trustees, and others, evidenced by the said mortgage and the bonds and coupons secured thereby, for this:

That the bill and subsequent proceedings in this cause show that the debt secured by the mortgage foreclosed and the mortgage itself constitute contracts governed by the laws of Georgia; that long prior to and down to the date of the execution of the said mortgage and the creation of the debt secured thereby, it had been and was the law of the State of Georgia; and had become, first, by the decisions of the supreme court of the State of Georgia, and next, by statutory enactment of the legislature of the State of Georgia, a "rule of property," that a mortgage constituted only a lien upon the mortgaged property, passing no title, and that a mortgagee, in no event, was or could become entitled to the rents and profits of the mortgaged property.

And the said law was, at the date of the said decree of the 4th day of June, 1898, and still is, the law of the State of Georgia.

XXX. The court erred in the decree of the 4th day of June, 1898, in overruling the objections interposed by the Huguley Manufact-

uring Company to the granting of the motion wherein and whereby it was sought to apply the said rents and profits, which had been ascertained to be due in favor of the Huguley Manufacturing Company, to the said alleged deficiency due on the mortgage debt.

XXXI. The court erred in the said decree of the 4th day of June, 1898, in that:

It included, as a part of the said deficiency, that portion of the mortgage debt, in respect to which no default had been made at the time of the filing of the bill, and with respect to which, the court expressly declined to grant a foreclosure, as set forth in the 2nd and 7th paragraphs of the decree filed April 1st, 1895. (See 2nd printed Rec., pp. 280–'9.)

XXXII. The court erred in its decree of the 4th day of June, 1898, in fixing the amount of said alleged deficiency, in this:

587 That the said decree of foreclosure, filed on the 1st day of April, 1895, under the 2nd paragraph, provided as follows, to wit:

Par. 2. "The court finds, that after said default had occurred, as found above, but before the filing of this suit, the holders of forty (40) bonds in number, accepted the interest on the said bonds, and by the acceptance of said interest, they waived the default, and the principal of said bonds, amounting to the aggregate sum of $20,000.00, was not due and payable at the date of filing this suit, and that said trust deed cannot be foreclosed for said amount of said 40 bonds."

Again, it was also provided, in the 7th paragraph of the said decree, as follows:

Par. 7. "It is further ordered and decreed, that the remainder of said bonds, to wit: 40 in number, which are numbers as set out in par. 2 of this decree, for the aggregate sum of $20,000.00, and for the sum of $3,451.24, interest thereon to Nov. 1st, 1894, were not due at the time of filing this suit, and said plaintiff, as trustee, is not entitled to recover therefor."

By the 9th paragraph of the said decree, the said mortgage was foreclosed and a sale ordered, for the sum of $45,000.00, principal, (that being all of the mortgage debt then due), and for $17,005.92, interest thereon, "with all accruing interest, at 8 per cent. as in this decree adjudged to be due."

It appears, that on the 6th day of May, 1896, said mortgaged property was sold under this said decree, and brought the sum of $66,000.00. Applying the said sum of $45,000.00, principal, and $17,005.92, interest, with interest on these said two sums at 8 per cent. per annum, left remaining due upon said debt, for which said mortgage was foreclosed, a sum very much less than the alleged deficiency, ascertained to be due by the decree of the 4th day of June, 1898, the said balance or difference being, to wit: $3,446.60.

XXXIII. The court erred in the decree of the 4th day of June, 1898, in deducting from the amount awarded for rents and profits,

etc., in favor of the Huguley Manufacturing Company, the following items, to wit:

(a.) "The balance costs of this cause".....	$182.00
(b.) "The fees of Julius L. Brown, special master.....	375.00
(c.) "The fees of D. O. Smith, stenographer (in part).....	675.00
(d.) "The fees of T. B. Felder, special master (in full)....	2,500.00
(e.) "The fees of A. L. Waldo, accountant (in full).....	200.00
Total.....	$3,932.00
(f.) And in deducting from item of "supplies and findings" as "proper share of costs taxable against said Huguley Mfg. Co." (special).....	750.00
P. 19. Total taxed against the Huguley Mfg. Co.....	$4,682.00

And in allowing, (under the head of "As between the bond-
588 holders themselves") "solicitors' fees," as shown under subdivisions (a) and (b) of par. 5, of said decree of the 4th day of June, 1898, as follows:

(a.) Dorsey, Brewster & Howell.....		$1,000.00
Abbott & Smith.....		1,000.00
N. D. Denson.....		600.00
Total.....		$2,600.00
(b.) Dorsey, Brewster & Howell.....	$4,000.00	
B. F. Abbott.....	4,000.00	
	$8,000.00	
The foregoing fees to Dorsey, Brewster and Howell, and B. F. Abbott, being credited in said decree by $500.00, previously paid each, to-wit:.....	1,000.00	
		7,000.00
Total "solicitors' fees" under above head.....		$9,600.00

And in allowing, under same head, *i. e.*: "As between the bondholders themselves," par. 5 (a), the respective items of "expense," etc., as follows, to wit:

(a.) A. E. Buck, special commissioner.....	$400.00	
(b.) Advertising.....	250.00	
(c.) Court costs, clerk's fees, taking depositions, etc.	350.00	
		$1,000.50
Total expenses of reference, solicitors' fees, court costs, etc., as above set out.....		$16,282.50

And appellant assigns as error each of the said items as detailed above, under this assignment (No. XXXIII), as if each had been made the subject of a separate assignment.

XXXIV. The court erred in overruling the petition of Hammond, Chilton, Fort and Reed, solicitors, and in which the Huguley Manufacturing Company also joined, praying to be allowed compensation or fees for bringing into court the fund adjudged in favor of the Huguley Manufacturing Company.

XXXV. The court erred in overruling the motion of the Huguley Manufacturing Company, filed the 18th day of April, 1898, in and by which it was sought to correct the decree by allowing the Huguley Manufacturing Company interest upon the sundry items awarded to it, as of a "mean date" between the date of the first sale, to wit: the 6th day of September, 1892, and the date of the last sale, to wit, the 6th day of May, 1896, the said "mean date" being August 1, 1894, as explained in the said motion.

XXXVI. The court erred in sustaining the exception interposed by the Galeton cotton mills in respect to the item of "insur-
589 ance," allowed to the Huguley Manufacturing Company against the Galeton cotton mills by the special master, in his report.

XXXVII. The court erred in the decree, signed the 15th day of October, 1898, in modifying the decree of confirmation of the sale of the property with respect to the provision, fixing a lien on said property in favor of the Huguley Manufacturing Company as to any amount it might ultimately be decreed to be entitled to, and in setting aside said provisions of the decree of confirmation, and decreeing that whatever rights the Huguley Manufacturing Company might thereafter be adjudged to have, should be transferred to the net proceeds of the sale of the property, to be paid into registry of the court.

The decree was error, because it took away from the Huguley Manufacturing Company, a right which had previously been fixed and vested by the decree of confirmation, and because it diminished the security for the payment of the final recovery of the Huguley Manufacturing Company, the court having directed, in said decree of the 15th day of October, 1898, that large sums of money should be paid out of said proceeds, after it should be paid into court, preferably to the claim of the Huguley Manufacturing Company.

XXXVIII. The court erred in said decree of the 15th day of October, 1898, in directing the clerk of said court to pay out of said fund, when it should be paid to him, the attorneys' fees of Dorsey, Brewster & Howell, and B. F. Abbott, amounting to $7,000.00, because, if it was proper to transfer the lien of appellant to the fund, the fund should remain intact until the lien of appellant should be satisfied as to whatever amount shall finally be adjudged in its favor.

XXXIX. The court erred in this:

That prior to the date of the final decree of foreclosure, it had been

determined by the decree of the court that the Huguley Manufacturing Company was entitled to the rents and profits of the mortgaged property from the time the bondholders went into possession. But it was decreed that possession should not be restored, nor an accounting had of such rents and profits unless and until the Huguley Manufacturing Company should pay into court the sum of $10,000.00, which, it was alleged, the bondholders had paid in at the first foreclosure sale; that, from said term of said decision, an appeal was taken to the court of appeals, and by the said court, the decree, which adjudged the Huguley Manufacturing Company entitled to the rents and profits, was affirmed. That, thereupon, and in conformity with the opinion rendered by the said court of appeals, said circuit court ordered that a reference be held to ascertain the amount of rents and profits due to the said Huguley Manufacturing Company. That, while said reference was pending, and before the coming in of the master's report, the property was sold for the amount of the mortgage debt ascertained to be due; that subsequently the master reported in favor of the Huguley Manufacturing Company a large sum to wit: $39,713.51, which, on exceptions, was reduced to $36,210.99, and this sum was applied by the court to the alleged de-
590 ficiency on the mortgage debt. That, in thus applying said sum, which, (though undetermined at the time of the sale) was then adjudged to belong to the Huguley Manufacturing Company, after the said decree of foreclosure, if it could be so legally applied, the said Huguley Manufacturing Company and the said Alabama & Georgia Manufacturing Company were deprived of the right, within some short time after the decree of foreclosure, to pay the sum really due and owing upon said mortgage debt.

XL. The circuit court erred in this:

That, at the date of the sale under the last decree of foreclosure, a reference was pending under a decree theretofore made, directing a master to ascertain the sum due the Huguley Manufacturing Company for rents and profits, etc.; wherefore, said sale was made and the purchaser thereat became the purchaser, subject to all rights which the said Huguley Manufacturing Company should, after the holding of the said reference, and as the result of the findings upon said reference, be adjudged to have, together with all remedies for the enforcement of those rights; and by the action of the court, in applying said sum so found to the payment of said deficiency, said circuit court deprived said Huguley Manufacturing Company of its priority, which resulted from the fact that said sale was made pending said reference.

XLI. The court erred in the decree of the 15th day of October, 1898, in directing that all of the sum of $10,000.00, alleged to have been paid in by the bondholders, under the first decree of foreclosure, should be deducted from the purchase-money of $66,000.00, in this:

That a large part of said $10,000.00, to wit: $5,897.50, was used in paying a dividend, predicated on the amount bid, treated as cash,

on two bonds of $500.00 each, belonging to D. Jannopoulo, and on twelve bonds of $500.00 each, owned by Mrs. Sallie Huguley, who declined to join in the purchase, which bonds were proved up for the whole amount, and now constitute a part of the sum for which the mortgage was foreclosed. The right of the bondholders, who so bought said 14 bonds, to a dividend out of the proceeds of the last sale on the amount invested, is not only expressly recognized in said decree of the 4th day of June, 1898, but it is provided in the 8th paragraph of said decree, as follows, to wit:

Par. 8. "In making distribution, any bonds on which a percentage has been paid in cash to former holders, and credited thereon from money paid into court under the first sale, shall be controlled by the person or persons so paying the money into court, for the purpose of reimbursement of such monies so paid and the persons so paying the money shall receive all dividends to which said bonds shall be entitled, until they are reimbursed the amount so credited on said bonds, with interest thereon at 8 per cent. per annum; and the original holders are not entitled to receive any percentage until repayment of the amount received."

To thus permit the amount so paid for on *on* said bonds with interest, to be deducted from the purchase-money bid at the second sale, and yet to direct the payment, with interest, out of the proceeds left after making said deduction, is, to pay twice over
591 the sum invested in or paid upon said 14 bonds with interest.

XLII. The court erred in its decree of the 15th day of October, 1898, in deducting from the said purchase-money, the said sum of $10,000 with interest, for this:

That on the 10th day of October, 1892, the person or persons who paid said sums into court, were reimbursed and repaid by the West Point Manufacturing Company, as shown in the amended answer of the Galeton cotton mills, filed to the petition of the Huguley Manufacturing Company for an accounting for rents and profits, on the — day of June, 1893, and the evidence taken thereon.

To permit said payment now, would, if the deduction from the purchase-money, complained of in the next preceding assignment, be sustained, operate to pay three times over the said $5,897.50, invested or paid upon said 14 bonds.

XLIII. The court erred by directing in said decree of the 15th day of October, 1898, that the said sum of $10,000.00, and interest, be deducted therefrom, for the purposes therein stated, in this:

That the petition filed by L. Lanier, on the — day of October, 1898, praying a displacement of all liens on said mortgaged property, in order that he might raise the purchase-money bid for the property (about two years and a half before), by mortgaging said property, discloses on its face that the person who bid for said property, and to whom the relief was granted on said petition, was not the same person and did not represent the same persons who paid said purchase-money into court.

XLIV. The court erred in the said decree of the 15th day of October, 1898, in deducting the said $10,000.00, and interest, from the said purchase-money, in this:

That if the persons who paid said money into court were entitled to repayment of the said sum from the appellants, or either of them, the deduction of said sum, and interest, from the purchase-money did not absolve these appellants, or either of them, from the payment thereof, for that, the persons, who paid said sum into court, were not parties to nor represented in the proceedings disclosed by said decree.

XLV. The court was without jurisdiction to apply an asset, to wit, the $10,000.00, and interest, belonging to the person or persons who paid said principal sum into court, and apply it in favor of the said purchasers, as a credit on their bid, without having before it the person or persons who paid the said money into court.

XLVI. The court erred in deducting from the purchase-money, bid at the last sale, a large part, to wit, the sum of $3,375.18, of the $5,000.00 previously paid into court by the last purchasers, for this:

That said sum of $3,375.18 represented the following items of "costs" of taking the account of rents and profits before the master, to wit:

(*a.*) The fees of T. B. Felder, special master (in part)..... $2,500.00
(*b.*) The fees of D. O. Smith, stenographer, (in part)..... 675.00
(*c.*) The fees of A. L. Waldo, accountant, (in full)..... 200.00

592 And together with $750.00, also forming a part of the said $5,000.00, and of which $500.00 was by way of compensation paid to the special master, and $250.00 to the stenographer, was payment in full of the sum awarded to the master, to wit, $3,000.00, and in full of the fees of the stenographer $1,000.00, except the sum of $2,500 and in full of the fees of the accountant A. L. Waldo to wit, $200.00.

It results from the said deduction, that the Huguley Manufacturing Company, although successful in obtaining an award upon the said reference, is taxed with the entire compensation of all the officers for services in taking the said account, except $25.00.

XLVII. The court erred in said decree of the 15th day of October, 1898, in this:

Included in said sum of $5,000.00, paid into court on the last purchase, and which is deducted from the sum bid at the last sale, is the sum of $750.00, the fees (in part) of T. B. Felder, special master, and of D. O. Smith, stenographer. And yet, said sum was, by decree of the 4th day of June, 1898, deducted from the sum awarded the Huguley Manufacturing Company for "supplies and findings."

To deduct the same from the sum bid, also, was to pay said sum twice over.

XLVIII. The court erred in its decree of the 15th day of October, 1898, in this:

That there should have been paid into court the whole of said bid

for the purchase of said property, to wit, $66,000.00, as of date May 6th, 1896, with interest to date so paid in according to the decree, aggregating for purchase-money, principal and interest, $77,515.54, which together with the special award for supplies and findings, and interest, ($3,658.07), decreed in favor of the Huguley Manufacturing Company, make a total sum of $81,173.61, (less such amount with interest, as could be lawfully credited on same.) Whereas, the court, in said decree, required the payment into court of only the sum bid for the purchase-money, less $10,000.00, and interest thereon, and the $5,000.00, respectively, the two payments made at the first and last sales, aggregating, principal ($48,433.36), and interest ($8,665.18), only $57,098.54 actually paid in.

XLIX. The court erred in said decree of the 15th day of October, 1898, in providing that the Huguley Manufacturing Company should have no lien upon the property for its ultimate recover- in said cause, in this:

That, aside from the sum due for "supplies and findings" (for the payment of which, provision was made in the said decree,) there was no sum, (consistently with the then existing decree of the court, which had applied the sum awarded for rents and profits to the payment of the balance of the mortgage debt), due and owing to the Huguley Manufacturing Company; wherefore, said provision that said company should have no lien for its ultimate recovery could only apply to such recovery as might be awarded to the court of appeals, or under its direction, on a reversal of the decrees of
593 the circuit court; and this, said circuit court was without jurisdiction to provide against.

L. The court erred in its decree of the 15th day of October, 1898, in granting to L. Lanier, or to L. Lanier and associates, the relief prayed in their petition, filed on the — day of October, 1898, on the following grounds, in addition to those already assigned, and each ground is assigned as error:

(*a.*) It appears, that about two years and five months had elapsed from the date of the said sale to the filing of the said petition, and that in the meantime the Huguley Manufacturing Company was kept out of the possession of the mortgaged property, from which they had been unlawfully dispossessed under the former decree of foreclosure, which had been reversed; that said L. Lanier, or L. Lanier and associates should have been compelled to respond for the value of the use and occupation of the said property, as condition to the displacement in favor of himself, or of himself and associates, of the lien which the Huguley Manufacturing Company had, or might afterwards be adjudged to have upon the property, or any other right or equity of the Huguley Manufacturing Company.

LI. (*b.*) The court erred in the said decree of the 15th day of October, 1898, in this:

That it accorded to the said L. Lanier, or to L. Lanier and associates, valuable rights and privileges, which were not offered to him or others by the terms of the decree of foreclosure, in this:

That, by the said decree of foreclosure, the said sale was for cash, (in money or bonds); whereas, by said decree of the 15th day of October, 1898, he was given a credit of two years and six months, and further, that by the terms of the said decree of foreclosure, properly construed, the mortgagor nor its successor in interest could be deprived by the purchasers of the possession of the said property until the purchase-money was paid, and they should become entitled to a deed.

And yet, by said decree of the 15th day of October, 1898, said purchasers are relieved of all liability for said deprivation of possession.

LII. (*c.*) Said purchasers, for two years and six months, had failed to notify the court of the fact of their non-compliance with the terms of the said sale, or of any excuse for their non-compliance; wherefore, instead of granting to said L. Lanier, or L. Lanier and associates, purchasers, additional time, in which to raise the purchase-money, and removing liens and encumbrances for this purpose, said sale should have been set aside, and said purchaser or purchasers made to account for all damages resulting to any person, including those resulting to the mortgagor or its assignee, from being deprived of the use of the said property.

LIII. (*d.*) The court erred in its decree of the 15th day of October 1898, in this:

That in and by the said decree, privileges were granted and the sale confirmed, to persons other than those who bid at said sale.

LIV. (*e.*) The decree of the 15th of October, 1898, is wanting in validity, in this:

594 That prior to the confirmation, it changed the terms of sale.

LV. (*f.*) It is shown by the record, that a motion was made by L. Lanier, trustee, as purchaser, to confirm said sale, in June —, 1896, and a confirmation was resisted by the Huguley Manufacturing Company on the ground, amongst others, of the pendency of said reference, and because the master had not then reported; but notwithstanding such resistance, said purchasers insisted upon the confirmation of the said sale.

And yet, in said petition, filed by Lanier, in October, 1898, the fact of the pendency of said reference, and that the master had not reported, were alleged as a reason why the terms of sale had not been complied with.

The court erred, in holding said excuse to be a valid one, as it did in granting relief on said petition.

Appellants insist, that if the pendency of said reference, and absence of a report was not a valid ground why the sale should not be confirmed, it was not a valid excuse for failing to comply with its terms; and, that the court, therefore, erred, either in overruling said objections to confirmation, or in holding said excuse to be valid.

LVI. Said decrees of the 4th day of June, 1898, and of the 15th day of October, 1898, are erroneous, in that, same are not in con-

formity with the mandate of the U. S. circuit court of appeals, on its decisions of this cause under former appeals.

J. M. CHILTON,
W. R. HAMMOND,
Sols. for the Huguley Mfg. Co. et al., Appellants.

Acknowledgement of Service.

Due and legal service of the within assignments of errors, and of a copy of same, is hereby acknowledged, and all and further services and notice waived. This Dec. 2, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Sols. for Appellee.

Filing.—Filed in clerk's office 3rd day of Dec., 1898.

O. C. FULLER, *Clerk.*

Bond.

Know all men by these presents, that we, the Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company, and W. T. Huguley, as principals, and C. M. Curran and Jacob Hass, as sureties, are held and firmly bound unto J. J. Robinson, trustee, and the Galeton Cotton Mills, in the full and just sum of two hundred and fifty dollars, to be paid to the said J. J. Robinson, trustee, and the Galeton Cotton Mills, their certain attorney, executor, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs executors, and administrators, jointly and severally, by these presents.

595 Sealed with our seals, and dated this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately, at a term of the United States circuit court for the northern district of Georgia, on the 4th day of June, 1898, in a suit depending in said court, between The Huguley Manufacturing Company as intervener, or petitioner, and The Galeton Cotton Mills, as respondent, a decree was rendered against the said Huguley Manufacturing Co., the Alabama & Georgia Manufacturing Company and W. T. Huguley; and the said Huguley Manufacturing Co., Alabama & Georgia Manufacturing Co., and W. T. Huguley, having obtained said decree and files a copy thereof in the clerk's office of the said court, to reverse the said decree in the aforesaid suit, and a citation directed to the said J. J. Robinson, trustee, and Galeton Cotton Mills, citing and admonishing them to be and appear before the United States court of appeals for the fifth circuit to be

holden at New Orleans, La., within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Huguley Manufacturing Company, Alabama & Georgia Manufacturing Company, and W. T. Huguley, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE HUGULEY MANUFACTURING CO.,
By WM. T. HUGULEY, *Ag't and Att'y.* [SEAL.]
THE ALABAMA AND GEORGIA MFG. CO.,
By WM. T. HUGULEY, *Pres't.* [SEAL.]
WM. T. HUGULEY. [SEAL.]
C. M. CURRAN, *Surety.* [SEAL.]
JACOB HAAS, *Surety.* [SEAL.]

Sealed and delivered in presence of—
O. C. FULLER,
As to principal.

Approved by—
WM. T. NEWMAN,
U. S. Judge.

UNITED STATES OF AMERICA,
State of Georgia, Fulton County.

In person appeared before the undersigned, attesting officer, C. M. Curran, who, after being duly sworn, deposes and says, that he signed the within and foregoing bond as surety, and deponent further says that he is worth the sum of two hundred and fifty dollars above all his debts and liabilities, and above all homesteads and exemptions allowed to him by law.

C. M. CURRAN.

Sworn to and subscribed before me this Dec. 2d, 1898.

CHARLES HERMAN,
Notary Public, Fulton Co., Ga.

[SEAL OF N. P.]

596 Filing.—Filed in clerk's office Dec. 3, 1898.

O. C. FULLER, *Clerk.*

Citation.

UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to J. J. Robinson, trustee, and the Galeton Cotton Mills:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to an appeal sued out and filed in the clerk's office of the circuit court of the United States for the northern district of Georgia, in the cause wherein J. J. Robinson, *et al.*, were complainants, and The Alabama & Georgia Manufacturing Co., and The Huguley Manufacturing Co., and W. T. Huguley, were defendants, in which cause the Alabama & Georgia Manufacturing Co., and the Huguley Manufacturing Co., filed a petition for restitution and accounting against the Galeton Cotton Mills, said Huguley Manufacturing Co., — Ala. & Ga. Manufacturing Co., *and* being the appellants, and said Galeton Cotton Mills and J. J. Robinson, trustee, being the appellees in said cause, to show cause, if any there be, why the decree rendered against the said Huguley Mfg. Co., Ala. & Ga. Mfg. Co., as in said decree mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. T. Newman, judge of the circuit court of the United States, for the northern district of Georgia, this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

WM. T. NEWMAN,
U. S. Judge.

Service.—Service acknowledged of the within and foregoing citation, and copy waived. Dec. 2d, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Solicitors for Appellees.

Filing.—Filed in clerk's office Dec. 3rd, 1898.

O. C. FULLER, *Clerk.*

597 *Bill of Complaint.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE RIVERDALE COTTON MILLS, Complainant,
vs.
ALABAMA AND GEORGIA MFG. CO. ET AL., Defendant. } In Equity.

To the judges of the circuit court of the United States for the northern district of Georgia:

The Riverdale Cotton Mills which is a corporation organized under the laws of the State of Georgia, and has its principal place of business within, and is a citizen and resident of, the northern district of Georgia, brings this, its dependent bill, ancillary to the proceedings hereinafter referred to, against the Alabama and Georgia Manufacturing Co., whose residences are hereinafter shown, and thereupon your orator complains and says:

I.

That the said The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, are corporations, each created under and by the laws of the State of Georgia, and each also claiming, as will hereinafter appear by Exhibit "B" hereto, to have been organized under the laws of the State of Alabama; but if it should appear that either of said corporations was ever organized under the laws of the State of Alabama, which your orator in nowise admits, then orator avers that neither of them ever had any place of business within the State of Alabama, and that the only officers, directors, or stockholders, they or either of them ever had are and were the officers, directors, and stockholders, which they respectively had and have as organized under the laws of the State of Georgia, and the only place of business they or either of them ever had was within the State of Georgia; that neither of said defendant corporations now has any property of which orator has any knowledge and that both of said defendant corporations are citizens and residents of the State of Georgia within said northern district of Georgia; that as long as either of said defendant corporations had any property, said property was situated partly in Georgia and partly in Alabama, and was operated as one business from the office of each of said corporations at West Point, in said State of Georgia, and said defendant corporations owned no other property than the prop-
598 erty which each of them respectively owned as organized under the laws of the State of Georgia; that the said property of the said The Alabama & Georgia Manufacturing Company is fully described in the mortgage of which Exhibit "A" attached

hereto is a copy, and the said property of the said Huguley Manufacturing Company was an equity of redemption, acquired after the execution and delivery of said mortgage, in the same and identical property, as hereinafter appears.

II.

That heretofore, to-wit: on or about the 2nd day of January, 1884, the said The Alabama & Georgia Manufacturing Company at its said office in West Point, in the said State of Georgia, executed a mortgage upon all of its property situated in both of said States of Alabama and Georgia, on which property was a cotton factory, and which property as a whole constituted its manufacturing plant, and was indivisible, and was operated as one plant and is still indivisible, to J. J. Robinson, W. T. Huguley, hereinafter named, and W. C. Yancey, as trustees for the bond holders secured thereby; a copy of said mortgage is hereto attached as "Exhibit A" with leave to refer thereto as often as necessary. That subsequent to the execution of said mortgage, to-wit: in the year 1888, by certain proceedings had in the superior court of Troup county, in the State of Georgia, all of the property of the said The Alabama and Georgia Manufacturing Company situated in said States of Alabama and Georgia was sold subject to the mortgage, executed as aforesaid, to said Robinson, Huguley and Yancey, as trustees, and at the said sale certain persons became purchasers of said property, and subsequently, and prior to January 1, 1891, the said purchasers conveyed said property so purchassd by them to said Huguley Manufacturing Company, in which last mentioned corporation the said W. T. Huguley was interested, and thereby the said W. T. Huguley became interested adversely to the interests of the bond holders secured by the said mortgage executed by the said The Alabama and Georgia Manufacturing Company, as aforesaid, to said Robinson, Huguley and Yancey, as trustees, and that prior to the 1st of January, 1891, the said W. C. Yancey died.

Your orator further shows that heretofore, to-wit: six months prior to the 1st day of January, 1891, default was made in the said mortgage, and on or about the 20th day of January, 1891, the said J. J. Robinson, as trustee thereunder, filed his bill of complaint in this honorable court, praying, among other things, for the foreclosure of said mortgage; that the defendants to the said bill filed by the said Robinson, trustee, were the said The Alabama and Georgia Manufacturing Company, Huguley Manufacturing Company, and W. T. Huguley; that each of the said defendants to the said bill was duly and regularly served with process issued out of this honorable court, and each of said defendants to said bill, except
599 said W. T. Huguley, appeared in said court and defended the said bill, and a decree *pro confesso* was duly and regularly taken in said suit against the said W. T. Huguley, which said cause is number 360 on the equity docket of this honorable court.

III.

Orator further shows that the said bill of complaint filed by the said Robinson, as trustee alleged, among other things, that a default had occurred under the terms of said mortgage, and that the said trustee had the right and was entitled to have the said mortgage foreclosed for the benefit of the bondholders secured thereby, and said bill described the lands and other property identically as described in the mortgage a copy of which is hereto attached as "Exhibit A." That in the answer to the said suit filed by the said Robinson as trustee in said circuit court of the United States for the northern district of Georgia, filed by said Huguley Manufacturing Company, and by the Alabama and Georgia Manufacturing Company, said two corporations admitted the citizenship of said two corporations as being in the State of Georgia, as alleged in said bill of complaint, and admitted that said The Alabama and Georgia Manufacturing Company had executed some sort of a mortgage to said Robinson, Huguley and Yancey as trustees, but called for proof of said mortgage. The said answers further admitted that the said The Alabama & Georgia Manufacturing Company had executed bonds secured by said mortgage, and mentioned and described in said bill, and admitted that the Alabama & Georgia Manufacturing Company's equity of redemption in the property conveyed in said mortgage had become the property of said Huguley Manufacturing Company, and admitted that said The Alabama and Georgia Manufacturing Company had ceased to carry on its manufacturing business, but denied that any default had occurred in said mortgage or in the requirements thereof; that the said Huguley Manufacturing Company in its said answer filed in said suit prayed said circuit court of the United States for the northern district of Georgia to decree to said Huguley Manufacturing Company any surplus of the proceeds of the sale of said property over and above the amount necessary to pay the debt secured by said mortgage.

Orator further shows that in the said suit filed by the said J. J. Robinson as trustee in said circuit court of the United States for the northern district of Georgia, testimony was taken, and the said cause was tried on its merits, and in the said cause a decree was rendered heretofore, to-wit: on or about the 30th day of May, 1892, decreeing, among other things, the foreclosure of said mortgage and ordering the lands and property described in said bill of complaint and in said mortgage to be sold for the satisfaction of said mortgage indebtedness, and pursuant to said order of sale the said prop-
600 erty of the Alabama and Georgia Manufacturing Company was sold to Lanier, Dallis and Kirby, representing the said bond holders, and by said Lanier, Dallis and Kirby was transferred and conveyed to the Galeton cotton mills, a corporation.

IV.

Orator further shows that from the said decree of the circuit cou of the United States for the northern district of Georgia, foreclosin the said mortgage and ordering the said property sold, the sai The Alabama and Georgia Manufacturing Company and th Huguley Manufacturing Company, appealed to the United State circuit court of appeals for the fifth circuit; that upon said appea the said decree of the circuit court of the United States for th northern district of Georgia was reversed and annulled, and sai cause was remanded to said circuit court of the United States for th northern district of Georgia for further proceedings therein.

That afterwards, to wit: on or about the 10th day of June, 1893 the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company filed their petition in said suit filed as aforesaid by said Robinson as trustee, alleging, among other things, that the said Huguley Manufacturing Company was entitled to the rents and profits of said mortgaged property since the sale thereof above mentioned, and praying for an account of said rents and profits and a restitution of said property to said Huguley Manufacturing Company.

Your orator further shows that in the said suit filed as aforesaid in the said circuit court of the United States for the northern district of Georgia, the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company were represented as solicitor by one J. M. Chilton. That the said petition filed in the said cause by the said Huguley Manufacturing Company resulted in the purchasers at said sale so held as aforesaid under said decree of said circuit court of the United States for the northern district of Georgia being required by said court to credit the value of said rents and profits upon said mortgage debt.

Your orator further shows that afterwards, on or about the 30th day of March, 1895, a second decree was rendered in said cause instituted in the said circuit court of the United States for the northern district of Georgia by said Robinson as trustee, by which among other things, said mortgage was foreclosed and a sale of said mortgaged property was ordered, and the equity of redemption therein barred and foreclosed so far as the rights of the defendant corporations in said cause were concerned: that from said last mentioned decree said Huguley Manufacturing Company and said The Alabama and Georgia Manufacturing Company appealed to the United States circuit court of appeals for the fifth
601 circuit, and upon said appeal said last mentioned decree was in all things affirmed, heretofore, to-wit: on or about the — day of January, 1896; that in said cause, instituted as aforesaid by the said Robinson as trustee in the said circuit court of the United States for the northern district of Georgia, on or about the 10th day of March, 1896, a decree was rendered ordering the property de-

scribed in the said mortgage to be sold to satisfy the said decree rendered as aforesaid on or about the 30th day of March, 1895, and pursuant to the said decree of the 10th day of March, 1896, all of the property of the Alabama and Georgia Manufacturing Company described in the said mortgage "Exhibit A" hereto, was sold on or about the — day of May, 1896, to one L. Lanier, representing a majority of the bondholders secured by said mortgage, and subsequently the said sale was confirmed by said circuit court of the United States for the northern district of Georgia, on or about the 25th day of June, 1896, and subsequently, on or about the 15th day of October, 1898, was reconfirmed by said court; that in pursuance of said decree of confirmation of said last mentioned sale, the said circuit court of the United States for the northern district of Georgia ordered that a deed be executed to said purchaser or anyone he might designate, conveying to him or to such one designated by him the said property free from all claims of said Huguley Manufacturing Company and others, and in pursuance of said order a deed was executed by director of the said L. Lanier, by the commissioner of said court appointed to conduct the said sale, conveying the title to all the said property to your auditor, and your auditor paid all the purchase money therefor into court, as required by order thereof.

That from the proceedings had in said circuit court of the United States for the northern district of Georgia subsequent to the second remanding of said cause from the United States circuit court of appeals for the fifth circuit, the said Huguley Manufacturing Company and the said The Alabama and Georgia Manufacturing Company prosecuted a third appeal on or about the 2nd day of December, 1898, to the United States circuit court of appeals for the fifth circuit, and upon such last mentioned appeal the decrees involved therein of said circuit court of the United States for the northern district of Georgia were in all things affirmed, and said affirmance remains in full force and effect. That heretofore, to-wit: on or about the 16th day of May, 1899, the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company sued out an appeal to the Supreme Court of the United States from said last mentioned decree of affirmance rendered as aforesaid by said United States circuit court of appeals for the fifth circuit, and said appeal to the Supreme Court of the United States in said cause remains pending and undetermined.

602 V.

That the said proceedings in this honorable court hereinabove described and set forth in the said cause wherein J. J. Robinson as trustee was complainant and said The Alabama and Georgia Manufacturing Company and others were respondents, in which a foreclosure of said mortgage was sought and obtained by decree of this honorable court, fully appear by the records of this

court in said cause which is No. 360 on the equity docket of t court, and which are hereby referred to and made a part of this b of complaint, with leave to refer thereto as often as may be nec sary, and the said proceedings in said cause in the said Unit States court of appeals for the fifth circuit and in the Supre Court of the United States, appear by the records of said courts spectively, and your orator prays for leave to refer to the same, a hereafter to attach, if it should be necessary, copies of such portio of the said records of this court, and of the said United States circ court of appeals for the fifth circuit, and of the Supreme Court the United States, as may be required for a full and complete unde standing of the issues arising under this ancillary bill.

VI.

Your orator further shows that heretofore, to-wit: on or abo the 2nd day of May, 1901, after the said Huguley Manufacturi Company and the Alabama and Georgia Manufacturing Compan had prosecuted the appeal as aforesaid from the United Stat circuit court of appeals for the fifth circuit to said Supreme Cou of the United States, the said Huguley Manufacturing Compan and the Alabama and Georgia Manufacturing Company filed the chancery court for the county of Chambers and State of Al bama, their bill of complaint, a copy of which said bill of complai is hereto attached as "Exhibit B" and made a part hereof, wit leave to refer thereto as often as may be necessary; that said bill complaint filed in said chancery court of Chambers county, Al bama, is filed against your orator, against the Galeton Cotton Mill the West Point Manufacturing Company, J. J. Robinson, truste and the said W. T. Huguley, trustee; and orator avers that the sai Galeton cotton mills is a corporation organized under the laws the State of Alabama, to which said Lanier, Dallis and Kirby, th purchasers at the first sale, ordered by the circuit court of the Unite States for the northern district of Georgia, conveyed said property and which sale was subsequently set aside on said first appeal t said United States circuit court of appeals for the fifth circuit, a hereinbefore shown and set forth.

Orator further shows, that in and by the said bill of complai filed as aforesaid in the chancery court of Chambers county, Al bama, it is averred in substance that the Alabama and Georgia Ma ufacturing Company was a corporation organized under th
603 laws of the State of Alabama, and as such was not made party to that bill of complaint filed by the said J. J. Robi son, trustee, as aforesaid, and that no service of process was had i said suit filed by the said J. J. Robinson, trustee, upon said Th Alabama and Georgia Manufacturing Company as an Alabama co poration or upon its president, and further alleges that no attemp has ever been made by either direct or ancillary proceedings to sub ject the property described in said mortgage lying in the State o

Alabama, and that all of the property described in said mortgage, is situated in the State of Alabama, and that no advertisement of the sale of said property, and no sale of said property was ever made in the State of Alabama. Said bill so filed in Chambers county, further avers in substance, that all of said judicial proceedings had in the said circuit court of the United States for the northern district of Georgia, hereinabove deserибed and set forth, were subsequently null and void in so far as said proceedings concerned or affected the title of the Alabama and Georgia Manufacturing Company, and of the Huguley Manufacturing Company to that part of the said lands lying in the State of Alabama. It is sought in and by the said bill filed in Chambers county, Alabama, to hold orator, the Galeton Cotton Mills, and the West Point Manufacturing Company liable for the rents and profits of said property since May, 1892, all of which will more fully appear by inspection of "Exhibit B" hereto.

VII.

Your orator further shows that each and all of the claims to relief set up by the said Huguley Manufacturing Company, and the Alabama and Georgia Manufacturing Company in said suit filed in said Chambers county, Alabama, were set up, or could have been set up, and adjudicated in said proceedings had in said circuit court of the United States for the northern district of Georgia in the said suit filed by the said J. J. Robinson, as trustee, as aforesaid, as appears from the records and proceedings in said last mentioned cause. And orator avers that all the substantial issues raised and presented by said bill of complaint filed in Chambers county, Alabama, against your orator and others, were, or could have been, in said suit filed by the said Robinson, trustee, exhaustively investigated, adjudged and determined by this honorable court.

VIII.

Your orator further shows that the larger part of the property described in said mortgage lies and is situated in the State of Georgia, and the other part of said property lies or is situated in the State of Alabama, as the same is described in the said mortgage, a copy of which is hereto attached as "Exhibit A," and orator is advised by counsel and upon such advice avers, that the circuit court of the United States for the northern district of Georgia acquired and
604 had full jurisdiction to order the sale of all of the property described in the said mortgage. Orator further avers that neither The Huguley Manufacturing Company, The Alabama and Georgia Manufacturing Company, nor the said W. T. Huguley, who are defendants to said bill filed by the said Robinson, trustee, as aforesaid, did ever during the progress of said cause in said circuit court of the United States for the northern district of Georgia, raise any issue upon the jurisdiction of this honorable court to render a

decree for the sale of all of the said lands, as aforesaid, and orator again avers that said property is indivisible.

Orator further shows that the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company, by the said bill of complaint filed as aforesaid in said Chambers county, Alabama, are seeking to again raise and have investigated by a court of equity, in fraud of the rights of your orator, the same identical matters and issues which have heretofore in the said suit filed by the said Robinson in this honorable court been passed upon and adjudicated by this court. Orator further avers that said suit filed in Chambers county, Alabama, is vexatious, harassing and improper to be entertained at any time and especially while the appeal prosecuted as aforesaid by the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company from the United States circuit court of appeals for the fifth circuit to the Supreme Court of the United States is pending and undetermined. And orator avers that it is a flagrant violation of the rights of your orator as purchaser of this property under the final decree of this court for said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company to be permitted to go into a foreign jurisdiction and compel orator to go to the great trouble and expense of defending a suit brought by them in said Chambers county, Alabama, when substantially all the matters raised in said suit filed in said Chambers county, Alabama, have been finally adjudicated and determined or could have been adjudicated and determined in the said suit filed in this honorable court by the said J. J. Robinson, trustee.

And orator further avers that the filing of the bill by said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company in said Chambers county, Alabama, is nothing more nor less than an attack on the validity and integrity of all the decrees made in this honorable court, as well as the judgment rendered on the various appeals by the United States circuit court of appeals for the fifth circuit in the said cause, in said suit of the said J. J. Robinson, trustee, as aforesaid, and is in contempt of this honorable court.

That your orator is advised by counsel and upon such advice avers as a matter of law that it has the right to invoke the jurisdiction of this court, ancillary to the main case instituted by the said J. J. Robinson, as trustee, to protect it against the violation of its rights by the unjust and unconscionable conduct on the part
605 of the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company, in filing and prosecuting the said bill of complaint in the said chancery court of Chambers county, Alabama.

Your orator further shows that in the said bill of complaint filed in the said county of Chambers, in the State of Alabama, the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company are represented as solicitor by the same

identical J. M. Chilton, who acted for said two corporations as solicitor in the said suit filed as aforesaid by the said J. J. Robinson, as trustee, and said two defendant corporations are also represented in said suit in said Chambers county by solicitors who signed their names Welles, Bennett and Welles, but whose other names are unknown to orator, whose place or business orator is informed and believes, and upon such information and belief avers, is in the city of Washington, in the District of Columbia, and whose places of residence are unknown to orator; that the same J. M. Chilton is above the age of twenty-one years and a resident citizen of the city of Montgomery, State of Alabama; and said solicitors are made party defendant hereto for the purposes of injunction only hereinafter prayed for.

In consideration whereof, and for as much as your orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a court of equity where matters of this kind are properly cognizable and reviewable; and can only obtain adequate relief by this bill being maintained in this honorable court ancillary to the said suit herein wherein said J. J. Robinson as trustee is complainant, being number 360, on the equity docket of this court.

Wherefore: To the end that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by your orator; it now prays your honor to grant unto your orator your writ of injunction commanding the said The Alabama and Georgia Manufactnring Company, and the said Huguley Manufacturing Company, and J. M. Chilton and Welles, Bennett and Welles, as their attorneys and solicitors, and all persons claiming to act under authority, direction or control of said defendants or either of them to absolutely desist and refrain from any further prosecution against orator or anyone who has acquired or may acquire title to or interest in the property involved through orator, or against anyone under whom orator derives title to said property or with whom orator is in priority of estate thereto, of said equity cause in the said chancery court of Chambers county in the State of Alabama, and from the commencement or prosecution of any other suit or proceedings affecting the same matters involved in the equity cause in said Chambers chancery court, except the prosecution of the said appeal pending in the
Supreme Court of the United States in the main case described
606 herein, until such time as your honor shall appoint and direct
an order herein; and that upon such hearing the writ herein prayed for be made and confirmed until the final determination of this ancillary suit and that thereupon the said injunction may be made perpetual.

And may it please your honor to grant unto your orator such other or further relief in the premises as the nature of the circum-

stances of the case may require, and as may be in accordance with equity and good conscience.

And may it please your honor to grant unto your orator the writ of subpœna of the United States of America to be directed to the Alabama and Georgia Manufacturing Company, and the said Huguley Manufacturing Company, and J. M. Chilton, and Welles, Bennett and Welles, thereby commanding them and each of them at a certain day and under a certain penalty therein to be limited, personally to be and appear before your honors in this honorable court and then and there to answer all and singular the premises and to stand, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray:

B. F. ABBOTT,
P. H. BREWSTER,
WATTS, TROY & CAFFEY,
Solicitors for Complainant.

STATE OF GEORGIA, }
Fulton County. }

Before me, Robert Braselton, a notary public in and for said State and county, personally appeared L. Lanier, who is known to me, and who, being by me first duly sworn, deposes and says that he is the vice president of the Riverdale cotton mills and authorized to act for them in the premises; and further that the matters and things in the foregoing bill of complaint alleged are true and correct when averred as facts, and are true and correct to the best of his knowledge, information and belief when said allegations are made upon information or advice.

L. LANIER.

Sworn to and subscribed before me, this 8th day of June, 1901.

ROB'T BRASELTON,
Notary Public, &c.

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(Copy.)

"EXHIBIT A" TO BILL OF COMPLAINT OF RIVERDALE COTTON MILLS.

STATE OF GEORGIA, }
Troup County. }

At a meeting of the board of directors of the Alabama and Georgia Manufacturing Company held at the office of said company in the city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present the following resolutions were adopted:

Whereas the creditors of the company, namely: George Huguley, W. T. Walker, W. H. Huguley, W. H. Huguley & Company, and others have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company that the officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st) 7th day of January, 1884, and to run twenty years from date with the option of the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest at the rate of eight per cent. per annum, with interest coupons attached payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the company be and they are hereby authorized and empowered to execute a first mortgage on all of the real property of the company, including mill, machinery, fixtures, and all appurtenances thereto attached, either to the holders of said bonds, or to the trustee for their benefit as may be agreed upon. Said bonds and mortgage to be signed by the president under the seal of the company, and countersigned by the secretary and treasurer. Said bonds to be issued in such denominations as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company, to-wit: W. H. Huguley first president, and W. H. Huguley and Company, its treasurers, and W. T. Huguley, its secretary, in conformity with said resolutions have issued the bonds of said company to the amount of sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars due and payable on the (1st) 7th day of January, 1904, with interest coupons attached payable semi-annually on the 7th day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

608 In which said bonds the said company reserve the right and the privilege to pay off and call in all of or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds are numbered from one to one hundred and thirty inclusive.

Now this instrument made and entered into on this the 1st day of January, 1883, between the Alabama and Georgia Manufacturing Company of the first part, and J. J. Robinson, W. C. Yancey, and W. T. Huguley as the trustees of said bonds, of the second part, witnesseth, that the Alabama and Georgia Manufacturing Company, the said party of the first part, for and in consideration of the premises and for the purpose of securing the payment of principal

and interest of said bonds, and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed, and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancey, and W. T. Huguley, as trustees aforesaid, their survivors and successors, the following real estate, to-wit: All of a large island in the Chattahoochee river designated as Island No. Six (6) containing one hundred and forty-three (143) acres more or less; also Island No. Nine, (9) containing seven acres more or less, also a small island between Islands Numbers Nine and Six upon which the east end of the factory building rests, containing four acres, more or less. All of the above three described islands being in twentieth (20) district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by the said river, beginning at a point on the west bank of said river nearly opposite the center of the seven-acre island at a black gum, at or near a place known as Sulb's corner—thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job. Ross, and James Campbell joined, known then as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the river and thence down the bank of the river to the beginning corner,—containing sixty-five 23-105 acres, more or less, lying and being in Chambers county, State of Alabama, and being a part of section- twenty-eight (28) and twenty-nine (29) township twenty-one (21) range twenty-nine (29) as well as forty (40) foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements including the cotton mill and all the machinery therein or thereto belonging and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, their survivors and successors in trust, nevertheless and for the uses and purposes herein set forth, that is to say upon trust for securing and providing for the full and com-
609 plete payment of the aforesaid sum of sixty-five thousand dollars ($65,000.00) with the interest due and owing by the said The Alabama and Georgia Manufacturing Company to the holder or holders of the said bonds or the coupons thereto attached hereinbefore referred to and described and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguley, or a majority of them, or their survivors or successors, are hereby authorized and empowered, should default be made in the payment of said bonds, when they fall due, or in the payment of the interest on said bonds, as it shall

approve, then immediately on such default being made known by the holder or holders of said bonds, or holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company, the same shall remain unpaid for six months after such default shall have been made in the payment of the said interest or principal as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said The Alabama and Georgia Manufacturing Company upon giving sixty days' notice of the time and place of sale together with a description of the property in a newspaper published in Atlanta, Lagrange, and West Point, Georgia, to proceed to sell at public auction at the office of said company in the city of West Point, Georgia, for cash, the property herein conveyed, or a sufficient amount of the same to pay the amount due, and apply the proceeds of sale first, to the expense of sale, second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus if any, to be paid over to the proper officer of said company, and to execute titles to the purchaser thereof and in the event the amount realized from the said — of said property shall be sufficient to liquidate the whole of said debt, then the same shall be pro rated amongst the holders of said bonds and coupons. And for the further security of the holders of said bonds and coupons the said The Alabama and Georgia Manufacturing Company hereby stipulates and agrees that it will keep this factory building and machinery insured against loss by fire in good and responsible insurance companies to the extent of sixty thousand dollars, and on their failure to do so, the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment said bonds and coupons, and the said The Alabama and Georgia Manufacturing Company hereby reserve to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same and dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed until after default is herein divided. Now, if the said Alabama and Georgia
610 Manufacturing Company shall pay off and discharge all said bonds and coupons, then, and in that event, this conveyance to be null and void.

In witness whereof, W. H. Huguley, the president of said company, and W. T. Huguley, the secretary, and W. H. Huguley and Company, the treasurers of said company, have hereunto set their hands and affixed the seal of said company at its office in the city of West Point on the 2nd day of January, 1884.

W. H. HUGULEY, *President.* [L. S.]
W. T. HUGULEY, [L. S.]
Vice President and Secretary.
W. H. HUGULEY & COMPANY, [L. S.]
Treasurers.

(Copy.)

Signed, sealed and delivered in the presence of

W. E. OSLIN.
L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust reposed by the same.

J. J. ROBINSON. [L. S.]
WM. C. YANCEY. [L. S.]
W. T. HUGULEY. [L. S.]

Signed, sealed and delivered in presence of

W. E. OSLIN.
L. M. HARRIS, *J. P.*

Filed in office for record, January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate.

(Copy.)

"EXHIBIT B" TO BILL OF COMPLAINT OF RIVERDALE COTTON MILLS.

To the Hon. R. B. Kelley, chancellor of the first district of the northeastern chancery division of the State of Alabama:

First.

Humbly complaining, show unto your honor, your orators, The Huguley Manufacturing Company, a corporation organized under the laws of the State of Alabama, and the Alabama and Georgia Manufacturing Company, a corporation organized and incorporated by the General Assembly of Alabama, by act No. 183, on the 7th day of February, 1866, a copy of which act is hereto attached as "Exhibit A" as a part of this bill. That said last mentioned
611 corporation was duly organized under said charter, and was afterward seized and possessed of the following lands, to-wit: "All of a large island in the Chattahoochee river, designated as Island No. Six (6), containing one hundred and forty-three (143) acres, more or less; also Island No. Nine (9) containing seven (7) acres, more or less; also a small island between Islands Nos. Nine (9) and Six (6), upon which the east end of the factory building rests, containing four (4) acres, more or less. All of the three above described islands being in the twentieth (20) district of Harris county, Georgia.

"Also, all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above described islands, bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the seven (7) acre island at a black gum at or near a place known as "Sulb's (Sell's) corner"—thence a straight line to a point where the land, owned in 1868 by Mrs. Freeman, Job Ross and James Campbell, joined, known then as the "Ross and Freeman corner," to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning corner—containing sixty-five and 23-100 (65 and 23-100) acres, more or less, lying and being in Chambers county, State of Alabama, and being a part of sections twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as forty (40) foot right-of-way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the party of the first part."

Second.

That on the 2nd day of January, 1884, the said The Alabama and Georgia Manufacturing Company executed to J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees, a mortgage upon said lands hereinbefore described, together with the cotton manufacturing plant, which orators had constructed, and which was situated thereon—said mortgage securing one hunded and thirty bonds of five hundred dollars ($500.00) each, bearing interest at eight per cent. (8%) per annum, due twenty years after date (1904), the bonds containing the clause that, if any default should continue on any instalment of interest for six months, after presentment at the office of the company, and after sixty days' written demand and notice served upon the president, the bonds so in default might be declared due.

612

Third.

Orators aver that W. C. Yancey, one of said trustees, is now dead, and that, while interest on some of said bonds may not have been paid by said corporation for several years past, no steps have been taken by the surviving trustees J. J. Robinson and W. T. Huguley, or by the holders of said bonds secured by said mortgage, to subject said property in the State of Alabama to the payment thereof.

Fourth.

Orators aver that in January, 1891, J. J. Robinson, one of the trustees under said mortgage, and a resident and citizen of the

county of Chambers and State of Alabama, without consultation or co-operation with W. T. Huguley, the surviving co-trustee, filed a bill in the circuit court of the United States, for the northern district of Georgia, praying to foreclose a portion of said bonds, the balance of the said bonds not being represented in the said suit.

That a corporation, known as the "Alabama and Georgia Manufacturing Company," alleged to be a corporation organized under the laws of Georgia only, and said Huguley Manufacturing Company, together with the said W. T. Huguley, were the sole defendants to said bill, said W. T. Huguley being made defendant as co-trustee, alleged to be interested adversely. The Alabama and Georgia Manufacturing Company, originally chartered and organized as a corporation under said act of the General Assembly of the State of Alabama, never has been made a defendant thereto, and never appeared as a party to said cause, the president of said corporation, to-wit: W. H. Huguley, himself likewise a citizen and resident of the county of Chambers, State of Alabama, never having been served with notice either of said alleged default of interest, as expressly required under the terms of the trust deed, or notice of said suit of foreclosure against said Alabama and Georgia Manufacturing Company. No attempt was made, by either direct or ancillary proceedings, to subject the property lying in the State of Alabama to this suit. A portion of the property was erroneously described in the said mortgage as lying within the county of Harris, in the State of Georgia, while the orators aver that all of said property was and is situated within the county of Chambers, in the State of Alabama.

The property was not advertised in the State of Alabama, nor was any sale or pretense of sale conducted in said State.

Under the proceedings of the United States circuit court, for the northern district of Georgia, the foreclosing bondholders secured a pretended sale of said property, and they, or parties claiming under them, took possession of not only that portion of the property which, it was claimed by them, erroneously and without reason of law and fact, to lie within the State of Georgia, but also of that portion which was admittedly situated in the State of Alabama.

613 Orators further aver that, pursuant to such proceedings had in said cause, such lands and improvements thereon were on the 6th day of September, 1892, exposed to sale in Atlanta, Georgia, and that, at said sale, one L. Lanier and one A. T. Dallis, and one J. T. Kirby, bought for certain holders of the bonds secured by said mortgage, and thereupon a corporation was organized under the laws only of the State of Alabama, under the corporate name of "the Galeton cotton mills." A copy of said charter is hereto attached, marked "Exhibit B," as a part of this bill.

That said corporation, and those claiming under them, took possession as aforesaid of said manufacturing plant and all its appurtenances, supplies and findings, etc., and remained in possession until the 6th day of May, 1896, receiving throughout the whole of said

period the rents and profits arising from the operation of said manufacturing plant, amounting to a large sum, to-wit: two hundred and twenty-eight thousand ($228,000.00) dollars.

Orators aver that said decree of foreclosure was reversed, annulled and vitiated on appeal to the United States circuit court of appeals, for the fifth circuit, and thereupon another decree of foreclosure was rendered in said United States circuit court, for the northern district of Georgia, and on, to-wit: the 6th day of May, 1896, said property was again exposed to sale, under the said decree, at Hamilton, Harris county, Georgia, and the same was bid off in the name of L. Lanier as "agent and trustee for the mortgage bondholders."

Orators aver that after the last mentioned sale there was no change of possession until October or November, 1898, when, by order of said court, directing that a conveyance be executed to "L. Lanier as trustee, or to such person or persons as he may direct," some officer, appointed by said court, executed what purported to be a deed of conveyance of all of said property to a corporation, organized only under the laws of Alabama, under the name of "the Riverdale cotton mills," and since that time said manufacturing plant has been operated under said corporate name. Orators aver that none of said judicial proceedings were final, but that all of them are now pending upon appeal in the Supreme Court of the United States.

Orators aver that the said West Point Manufacturing Company, a corporation organized only under the laws of the State of Alabama, was the principal, if not sole stockholder, of both the said "Galeton cotton mills," and of the said "Riverdale cotton mills," and as such has received the rents and profits derived from the operation of said property from the sixth day of Septenber 1892, down to the present time.

Orators allege that the officers, directors and stockholders in each of said corporations, to-wit: "the Galeton cotton mills," "the Riverdale cotton mills," and "the West Point Manufacturing Company," were the same; that, as matter of fact, the said "Galeton cotton mills" and the said "Riverdale cotton mills" were "dummy" cor-
614 porations—the West Point Manufacturing Company being, as orators aver, the real owner of the assets of said corporations and exercising and controlling all their corporate franchises and functions.

Orators further aver that said West Point Manufacturing Company caused the said corporations, to-wit: "the Galeton cotton mills" and the said "Riverdale cotton mills" to be formed with the purpose and design of escaping liability for the rents and profits of said property.

Orators aver that the said rents and profits, derived from the operation of said property, from the 6th day of September, 1892, down to the 6th day of May, 1896, amounted as aforesaid to the sum of two hundred and twenty-eight thousand ($228,000.00) dollars, with

interest; and from the said last named date, to-wit from the 6th day of May, 1896, down to the present time (say 1st day of May, 1901,) have amounted to a large sum, to-wit: over three hundred thousand ($300,000.00) dollars, with interest.

Orators aver that, during the possession of the said Galeton cotton mills and of the Riverdale cotton mills, great damage was done and waste committed in respect to the said property, aggregating to-wit: about fifty thousand dollars ($50,000.00).

Fifth.

Orators aver that it was disclosed on the face of each of said judicial proceedings in the State of Georgia that a part of said property was situated in the State of Alabama. But it was and still is insisted by each of said corporations that another part of said property was situated in the State of Georgia, and that the title to the whole of said property passed under the said judicial proceedings. Said part of said property claimed by said defendant corporations to be situated in the State of Georgia is as follows; to-wit:

"All of a large island in the Chattahoochee river, designated as Island No. Six (6), containing one hundred and forty-three (143) acres, more or less; also Island No. Nine (9) containing seven (7) acres, more or less, also a small island between Islands Nos. Nine (9) and Six (6) upon which the east end of the factory building rests, containing four (4) acres, more or less. All of the three above described islands being in the twentieth (20) district of Harris county, Georgia."

Orators aver that whether any of said property is situated in the State of Georgia, or whether the whole of it is situated in the State of Alabama, depends upon the boundary line between the State of Alabama and the State of Georgia. Orators insist and now aver that the whole of said real estate lies in the State of Alabama.

Orators aver that the west bank of the main stream of the Chattahoochee river, beginning at or near West Point, Georgia, and extending down to the Gulf, is the boundary line between the State of Alabama and the State of Georgia, and that all of said
615 property lies upon the west bank of said main stream of the Chattahoochee river, and that the greater portion thereof, embracing all the main factory buildings, warehouses, operative and other houses, in short, the entire real estate, comprising said sixty-five and 25/100 acres, more or less, upon which land said factory village or town is established, all are situated not only west of said west bank of the Chattahoochee river, but west of a certain tributary thereof hereinafter referred to, and the whole property lying in the county of Chambers and State of Alabama.

Defendants claim that two islands or more, artificially made and fed by three creeks flowing from the Alabama side, and reinforced by the diversion from the main stream of the Chattahoochee river of a portion of its water supply, artificially forced around and confined

by the erection of certain dams, which stream, as aforesaid, at the plant of said West Point cotton mill, thence flows a short distance in the State of Alabama and empties into the river below the said islands, and east of all the remainder of the said property or factory plant, are in the State of Georgia. But orators aver that all of the lands covered by said islands lie in the State of Alabama, and that all of said lands, location of which in Alabama is disputed, are a part of fractional section thirty-three (33) township twenty-one (21), N. of range twenty-nine (29), E. St. Stephen district, Alabama, description of which appears upon the records in the office of the secretary of state of Alabama, and includes all the lands in controversy. The official field notes, as prepared by the secretary of state of Alabama from the maps and surveys on file in his office, is filed herewith, marked "Exhibit C" as part of this bill.

It is contended, on the other hand, by said corporations, respondents to this bill, that a portion of said property is situated in the State of Georgia, as aforesaid, and by reason of said diverse contentions, a controversy has arisen and now exists in respect to the boundary line between the said States of Alabama and Georgia.

Sixth.

Orators further allege, upon advice of their solicitors, that all of said judicial proceedings in the State of Georgia are absolutely null and void in so far as concerns or affects the title of your orators to said lands, in this: that all of said lands were, as your orators again aver, situated in the State of Alabama.

But, if orators are mistaken in the averment that all of said lands were situated in the State of Alabama, and that, therefore, the conveyances executed thereunder passed no title to any part of the said lands, and it should appear that any portion of said lands were situated in the State of Georgia, then and in that event, your orators aver that said sale is, if said decree is divisible, at all events invalid as respects the lands situated in Alabama, to-wit:

"Also, all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above-described islands,
616 bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the center of the seven (7) acre island, at a black gum, at or near a place known as "Sulb's (Sell's) corner"—thence a straight line to a point where the land, owned in 1868 by Mrs. Freeman, Job Ross, and James Campbell, joined, known then as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning corner—containing sixty-five and 23/100 (65-23/100) acres, more or less, lying and being in Chambers county, State of Alabama, and being a part of section-twenty-eight (28) and twenty-nine (29), township twenty-one (21), range twenty-nine (29), as well as forty foot (40) right of way from

the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the said party of the first part," (to-wit: the Alabama and Georgia Manufacturing Company).

Seventh.

Orators aver that said West Point Manufacturing Company claims and insists that, in the course of the said judicial proceedings in the circuit court of the United States, it or said corporations identified with it, as aforesaid, has paid off and discharged a large number of said bonds secured by said first mortgage, or has otherwise obtained a legal or equitable title to the same. If such be the fact, orators admit and concede that the said West Point Manufacturing Company is entitled to be reimbursed, if it has paid such bonds, or to receive payment of the same if they, or said other corporations, own the same, and in either event, to receive interest on the amount so paid out or so due. And orators offer to pay the same as a credit on the rents and profits so received by the said West Point Manufacturing Company, or said other corporations, if such rents and profits should extend so far forth, and further, offer to pay any deficiency that might exist. But, if your orators are mistaken in averring that said West Point Manufacturing Company, or said other corporations, has paid or is the legal or equitable owner of the said bonds, and if it should appear that said bonds are still outstanding and unpaid, then and in that event, orators offer to pay whatever sum is due on the said bonds, and submit themselves fully to this honorable court to do and to perform what may be adjudged to be equitable in the premises.

Orators, The Huguley Manufacturing Company, a corporation, avers that it purchased and acquired all the property hereinabove described subject to said mortgage, and is now the owner of the same, subject to said mortgage.

617 Orators make parties defendants to this bill, the said Galeton Cotton Mills, the said Riverdale Cotton Mills and the said West Point Manufacturing Company, and the said J. J. Robinson, trustee, who is over the age of twenty-one years and who resides in the county of Chambers, State of Alabama, and also said W. T. Huguley, trustee, who is over the age of twenty one years and resides in the city of New York, State of New York, and pray that summons issue to said resident defendants, and that publication be had as to said non-residents, requiring each to plead, answer or demur to this bill of complaint within the time prescribed by law.

Premises considered, may it please your honor to adjudge and decree that your orators, as mortgagors, are entitled to redeem said mortgaged property, and that said equity of redemption has never

been cut off by any of the said judicial proceedings aforesaid and that an account of said mortgage debt be taken. That your honor will cause it to be referred to a master to ascertain the rents and profits earned or that should have been earned, and all wastes, damages and conversions committed by said Galeton cotton mills, and by said Riverdale cotton mills, and by said West Point Manufacturing Company, and by said J. J. Robinson, trustee, and to further ascertain how much of said rents and profits have been or should have been received by said West Point Manufacturing Company.

That your honor, upon the coming in of such report, if it shall appear that said West Point Manufacturing Company is itself, or through said other corporations, as alleged in this bill, the legal or equitable owner of said bonds, will direct the same to be treated as paid out of said rents and profits. But, if said bonds have not been so paid and are not so held and owned, that your orators be decreed entitled to redeem the whole of said property, or if not the whole, then such portion of said property which is situated in the State of Alabama, if such portion be less than the whole, by paying the same with the interest thereon. And that, at all events, a decree be rendered in favor of your orators against said parties, herein sought to be charged, for said rents and profits earned or that should have been earned, and all wastes, damages and conversions.

Orators pray that, as the said defendant corporations, whom your orators aver are mortgagees now in possession, deny to orators all rights to the profits and rents of said property, although they have already received far more than can be due them by reason of their interests as mortgagees, it will result in doing injury to orators, and deprive them of their just rights to allow said parties to operate the said mills during the pendency of this suit, and as the stopping of the mills would result in irreparable injury, this honorable court appoint a receiver, who shall be empowered to continue said business under such orders as this honorable court may deem necessary or proper. And orators pray that the property be kept insured for the benefit of such parties as this honorable court may decree to be entitled thereto.

618 And if mistaken in this special relief prayed, orators pray for such other and further or different relief as the nature of the circumstances of its case may require, and as to equity may seem meet, and orators will ever pray, etc.

Note.

The defendants, to-wit: the said Galeton Cotton Mills, and the said Riverdale Cotton Mills, and the said West Point Manufacturing Company, and the said J. J. Robinson, trustee, and the said

Wm. T. Huguley, trustee, are required to answer each paragraph of the foregoing bill, but oath to answers is waived.

(Signed) J. M. CHILTON,
WELLES, BENNETT & WELLES,
Solicitors for Complainants.

(Copy.)

EXHIBIT A.

An act to incorporate the Alabama and Georgia Manufacturing Company.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama in General Assembly convened, That James Metcalf, George Huguley, Benjamin H. Hill, William P. Chilton, and George W. Huguley, together with such other persons as may hereafter be associated with them, and their successors, be and they are hereby made and constituted a body corporate in fact and in name, under the name, style and title of "The Alabama and Georgia Manufacturing Company," and by that name shall be, and are hereby made able and capable at law, to have, hold, receive and purchase, possess and enjoy to them and their successors all real and personal estate, of whatever kind or amount said corporation may deem necessary to carry all the objects of said corporation into full force and effect, and may sell, grant, convey or otherwise dispose of the same, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts having competent jurisdiction; to make use and have a common seal, and the same to alter, break and review at pleasure, and to do all the acts incident to a body corporate and politic.

SEC. 2. Be it further enacted, That the objects of said corporation shall be the manufacture of wool and cotton into thread and cloth, the manufacture of meal, flour, lumber, shingles, boards and machinery of any description, or such branches or parts thereof as they see proper to engage in. The place of business shall be on the Chattahoochee river, in the neighborhood of Campbell's mills, in the county of Chambers and in the State of Alabama; and to enable the said persons named in the first section of this charter to carry
619 out the purposes of this charter, they and their successors and associates may control and use the water of the Chattahoochee river, so far as the riparian rights of this State are concerned, by locks, dams, canals, or otherwise, for manufacturing purposes generally; and to secure their property against loss by fire or other injuries, may prevent persons from building fires or camping within two hundred yards of the factory buildings.

SEC. 3. Be it further enacted, That said body corporate shall have power to prescribe the number of shares into which the capital

stock of said corporation shall be divided, the mode in which it shall be taken, paid, transferred or assigned, and also to prescribe the mode by which stockholders shall vote, and the number of votes to which each share shall be entitled; that the rules adopted shall be uniform, equally securing the rights of each stockholder; and also to provide for the election of such officers as may be deemed necessary for the government and management of the affairs of the corporation, to ordain, establish, and put in execution such by-laws, ordinances and resolutions as they shall deem necessary and expedient for the government of said corporation, not inconsistent with the constitution and laws of the State of Alabama, or of the United States; and in general to do and execute all and singular the acts, matters and things which may be necessary for manufacturing.

SEC. 4. Be it further enacted, That said corporation shall not exercise banking privileges, but is authorized to carry the foregoing granted powers into execution, according to the true intent and meaning thereof.

SEC. 5. Be it further enacted, That said corporation shall have power to borrow money and to loan out its surplus earnings on similar security or mortgage, and to ordain such rules and regulations in respect to stockholders who refuse to pay up any balance on their stock, and to compel him to pay upon penalty of forfeiture to said corporation; provided that no stockholders shall be liable beyond the amount of his, or her, or their stock.

Approved February 7, 1866.

EXHIBIT B.

The Galeton cotton mills.

STATE OF ALABAMA, }
Chambers County. }

To the probate judge of said county:

L. Lanier, of Chambers county, Alabama, and A. T. Dallis, of Lagrange, Troup county, Georgia, and L. J. Blackmon, of West Point, Ga., having associated themselves for the purpose of manufacturing, under the name and style of the Galeton cotton mills, desire for themselves and such other persons as may be associated with them, to be incorporated under the above name and style. The capital stock of said corporation to be one hundred thousand dollars each.

620 The general purpose of said corporation is to convert raw material into manufactured goods, and the particular business proposed is to convert cotton into yarns and cloth, the object being pecuniary profit for the stockholders, said corporation to have its principal place of business in Chambers county, Alabama, near West Point, Ga.

For the purpose of organizing said corporation, they desire that commission issue authorizing them to open books of subscription to the capital stock of said corporation.

L. LANIER.
A. T. DALLIS.
L. J. BLACKMON.

Filed in this office Sept. 14, 1892.

J. J. ROBINSON,
Judge of Probate.

Probate Court.

STATE OF ALABAMA, }
Chambers County. }

To L. Lanier, A. T. Dallis, and L. J. Blackmon:

Whereas you have this day filed in the office of the judge of probate of said Chambers county, Alabama, your declaration in writing, praying to be formed into a corporation under the name and style of the Galeton cotton mills, complying in said declaration with section 1558 of the Code of Alabama.

You are hereby authorized as commissioners to open books of subscription to the capital stock of said proposed corporation at such time and place and upon such notice as you may appoint.

J. J. ROBINSON,
Judge of Probate, Chambers Co., Ala.

Sept. 14, 1892.

WEST POINT, GA., *September 15th*, 1892.

Pursuant to a call made by the commissioners authorized by Judge J. J. Robinson under date September 14, 1892, to open books of subscription to the capital stock of the Galeton cotton mills, L. Lanier and L. J. Blackmon, representing a majority of the capital stock of the Galeton cotton mills, met at the banking office of W. C. and L. Lanier, West Point, Ga., and proceeded to the organization of the company by electing three members of a board of directors for the term of one year, or until their successors are elected and qualified, postponing the election of other directors until some subsequent day. L. Lanier, A. T. Dallis and L. J. Blackmon were elected. Demand for the payment of twenty per cent. of the subscription of fifty thousand dollars was made, and the amount paid in cash from L. Lanier, A. T. Dallis and L. J. Blackmon.

Meeting adjourned subject to call of L. Lanier.

L. LANIER.
L. J. BLACKMON.

621 STATE OF GEORGIA, }
Troup County. }

In person came before me L. Lanier, who on oath says that the following is a list of subscribers to the Galeton Cotton Mills capital

stock: L. Lanier, $49,000.00; A. T. Dallis, $500.00; L. J. Blackmon, $500.00. And that the above is a copy of minutes of meeting of subscribers.

L. LANIER.

PHIL LANIER, *N. P.*

Filed in office Sept. 17, 1892.

J. J. ROBINSON,
Judge of P.

Probate Court.

STATE OF ALABAMA, }
Chambers County. }

To L. Lanier, A. T. Dallis, and L. J. Blackmon:

Whereas, it appearing from papers on file in the office of the judge of probate, of the county of Chambers, State of Alabama, that such proceedings have been had under and — pursuance of chapter five, title and part two, of the Code of Alabama, as entitled you to be and become a corporation under the name and style of The Galeton Cotton Mills.

Now, be it known, that you are duly organized as a corporation under said corporate name and style, and for the purposes expressed in the declaration on file in this office, having the power, capacity and authority conferred by law.

Witness my hand this 17th day of September, A. D. 1892.

J. J. ROBINSON,
Judge of Probate Court.

STATE OF ALABAMA, }
Chambers County. }

I, A. J. Driver, Jr., judge of probate of said county and State, hereby certify that the above is a correct copy of the papers on file in this office in the matter of the incorporation of the Galeton Cotton Mills, as they appear of record in Book of Corporations, pages 63–66, inclusive.

Witness my hand and seal of office this 2nd day of May, 1901.

A. J. DRIVER, JR.,
Judge of Probate.

(10 cents documentary rev. stamp.)

No. 13. This license expires Dec. 31, 1898. Amount received, $40.00. No. of tres. receipt —. State, $40; county, —.

License.

THE STATE OF ALABAMA, }
County of Chambers. }

This is to certify that Riverdale Cotton Mills has deposited with the judge of probate of said county the sum of forty dollars,
622 as required by law, and it is therefore authorized to transact

business as a corporation at River View, Ala., and at no other place.

W. S. WHITE, *Auditor.*

Countersigned Jan. 16, 1899.
A. J. DRIVER, JR.,
Judge of Probate.

STATE OF ALABAMA, }
Chambers County. }

I, A. J. Driver, Jr., judge of probate in and for said county, do hereby certify that the above is a true and correct copy of a license issued to Riverdale Cotton Mills, a corporation, Jan. 16, 1889, by me as judge of probate for said county, as same appear of record on page 153 of Record of License in this office.

Witness my hand and seal of office this second day of May, 1901.

[SEAL.] A. J. DRIVER, JR.,
Judge of Probate.

(10 cents documentary revenue stamp.)

EXHIBIT C.

THE STATE OF ALABAMA, }
Department of State. }

I, Robert P. McDavid, secretary of state, do hereby certify that the pages hereto attached contain a true, accurate and literal copy of field notes of section 33, township 21 N., of range 29 E., St. Stephens district, Ala., as the same appears on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the great seal of State, at the capitol, in the city of Montgomery, this 1st day of May, one thousand nine hundred and one.

ROB'T P. McDAVID,
[GREAT SEAL.] *Secretary of State.*

Field Notes of Fractional Section 33, *Township* 21 *N. of Range* 29 *E., of St. Stephens District, Ala.*

Beginning at the northwest corner, thence east land broken 3 rate growth oak and hickory undergrowth pine and gum

40.00 Set up the ½ mile post from which
N. 22 E. 0c. 20 post oak ¼s.
S. 35 E. 0.13 red oak ¼s.

50.00 To 2nd rate land, growth oak and hickory undergrowth sassafras and opossum

80.00 Set up the northeast corner, from which

N. 58 E. 1c. 20 hickory	12–29–21–27		
N. 02 W. 0.14 red oak	20	"	" 28
S. 03 W. 0.39 hickory	9	"	" 33
S. 08 E. 0.40 "	11		34

623 Beginning at the N. E. corner thence south, land level, 2nd rate, growth oak, pine and hickory, undergrowth shumach and ash. Set up the fractional post on river bank, from which—

27.50 S. 80 W. 0.25 beech ¼ S. 14–29–21–33
S. 85 E. 0.25 white oak ¼ S. 9–29–21–30

Meanders down the river, commencing at the southwest corner of F. S., thence

N. 70 W. 6.50	
West 5.50	S. 23 W. 5.00
N. 66 W. 3.50	S. 14 E. 2.00
N. 54 W. 4.00	S. 41 W. 2.50
N. 85 W. 6.00	N. 51 S. 10.00
S. 74 W. 5.00	S. 26.30 W. 9.50 or 7.50
S. 47 W. 8.00	S. 45 W. 8.00
S. 10 W. 5.50	S. 03 E. 9.00
S. 17 E. 3.50	S. 04 E. 6.00 to F. post on township line.

Beginning at the northwest corner, thence south, land broken, 3 rate growth pine and chestnut, undergrowth pine and blackjack

40.00 Set up the ¼ mile post from which
N. 81 E. 0.49 black jack ¼s.
N. 56 W. 0.07 pine ¼s.
40.24½ ¼ section post.

80.49 to the southwest corner from which

N. 61 E. 0.75 red oak	10–29–21–33
N. 40 W. 0.06 hickory	5–29 " 32
S. 50 W. 1.00 pine	16–29 " 5
S. 81 E. 0.72 post oak	7–29 " 4

Beginning at the southwest corner (township line, 2 mile post) 26.00 thence east land waving set up fr. post on the west bank of the Chattahoochee river, from which

N. 25 E. 0.42 white oak	27–29–21–33
S. 19 E. 0.80 beech	13 " 20–04

Department of State. Alabama. Robert P. McDavid, secretary of state. Montgomery, July 31, 1900. Mr. W. T. Huguley, 92 Franklin St., New York city. Dear sir: As requested in your letter of the 26th inst., I herewith enclose you copy of the field notes for fractional section 33, T. 21 N., range 29, E., as the same appears on file in this office. For this service I am required under the law to turn one dollar into the treasury, which please remit to, yours very truly, Robert P. McDavid, secretary of state. Enc.

624 In the Chancery Court of Chambers County, Alabama.

THE HUGULEY MANUFACTURING COMPANY & THE ALA. & GA. Mfg. Co.

vs.

THE WEST POINT MANUFACTURING COMPANY, THE GALETON COTton Mills and The Riverdale Cotton Mills, and J. J. Robinson, Trustee, *et al.*

I, William T. Huguley, both for myself in person and as trust of the first mortgage bondholders of the Alabama and Georgia Manufacturing Company, do hereby accept service of the foregoing bil and waive service, by publication of the same.

Witness my hand this the 3rd day of May, 1901, at La Fayette, Al

WM. T. HUGULEY.

Witness:

ARMSTEAD BROWN.

(Copy.)

Original bill filed May 2, 1901.

No. 625. Chambers county chancery court.

Upon presentation of the foregoing bill and upon motion of com plaint,—

It is ordered that complainant be and it is hereby allowed to fil the said bill of complaint, and the clerk is ordered to file the sam and to docket the cause, all without prejudice to the rights of de fendants or any of them.

At chambers, Atlanta, Georgia, this 10th day of June, 1901.

WM. T. NEWMAN,

U. S. Judge.

Read and considered.

It is ordered that the defendants named in the bill of complain show cause before me at the United States circuit court room in A lanta, Georgia, on the 20th day of June, 1901, at ten o'clock a. m why an injunction should not issue as prayed for in the bill.

In the meantime and until the hearing is had the defendants ar restrained from further proceeding in the cause in the chancery cour of Chambers county, Alabama, wherein The Huguley Manufacturin Company and The Alabama and Georgia Manufacturing Compan are complainants and The Riverdale Cotton Mills and others are de fendants, as prayed for in the bill in this cause.

Let copy of this order and subpœna be served on each of the de fendants wherever found.

At chambers, Atlanta, Ga., this 10th day of June, 1901.

WM. T. NEWMAN,

U. S. Judge.

Filed in clerk's office June 10, 1901.

O. C. FULLER, *Clerk.*

625 (*Subpœna.*)

UNITED STATES OF AMERICA,
Northern District of Georgia.

THE RIVERDALE COTTON MILLS, Complainant,
and
ALABAMA & GEORGIA MANUFACTURING COMPANY, Huguley Manufacturing Company, John M. Chilton, and Welles, Bennett & Welles, Defendants. } In Equity.

The President of the United States to Alabama and Georgia Manufacturing Company, Huguley Manufacturing Company, John M. Chilton, and Welles, Bennett & Welles:

For certain causes offered before the judges of the circuit court of the United States for the northern district of Georgia, in equity, you, and each of you, are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Atlanta, at rules to be had on the first Monday in August (1901) next, to answer to those things which shall then and there be objected to you by the bill of complaint of the Riverdale Cotton Mills, and to do further, and receive what the said court shall have considered in this behalf, and this you may in no wise omit, under penalty of five hundred dollars; and have here this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this tenth day of June, in the year of our Lord, one thousand nine hundred and one.

[Seal U. S. Circuit Court.]

O. C. FULLER, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable, otherwise the bill may be taken *pro confesso*.

O. C. FULLER, *Clerk.*

I certify that I served the within writ of subpœna and a certified copy of the order attached on the parties at the places, time and in manner stated:

Name of person served, W. H. Huguley; how served, personally; when served, June 13, 1901; where served, West Point, Georgia.

Name of person served, W. T. Huguley; how served, per-
626 sonally; when served, June 13, 1901; where served, West Point, Georgia.

The return of W. H. Johnson, marshal, this 14th day of June, 1901.

By C. F. BROWN, *Deputy.*

Marshal's costs, $12.29.

(Indorsement:) No. 1127, in equity. In the circuit court of the United States for the northern district of Georgia. August rules, 1901. The Riverdale Cotton Mills, complainant, and Alabama and Georgia Manufacturing Company, *et als.*, defendants. In equity. Subpœna. Returned into clerk's office, and filed June 24th, 1901. O. C. Fuller, clerk. B. F. Abbott, P. H. Brewster, Watts, Troy and Caffey, complainant's solicitors.

In the Circuit Court of the United States for the Northern District of Georgia.

THE RIVERDALE COTTON MILLS, Complainant,
vs.
ALABAMA & GEORGIA MFG. Co., HUGULEY Manufacturing Co., JOHN M. CHILTON, and Welles, Bennett & Welles, Defendants. } No. 1127. In Equity.

Read and considered. It is ordered that the defendants named in the bill of complaint show cause before me at the United States circuit courtroom in Atlanta, Georgia, on the 20th day of June, 1901, at 10 o'clock a. m., why an injunction should not issue as prayed for in the bill.

In the meantime and until the hearing is had the defendants are restrained from further proceeding in the cause in the chancery court of Chambers county, Alabama, wherein The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company are complainants and The Riverdale Cotton Mills and others are defendants, as prayed for in the bill in this cause.

Let copy of this order and subpœna be served on each of the defendants wherever found.

At chambers, Atlanta, Ga., this 10th day of June, 1901.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office June 10th, 1901.

O. C. FULLER, *Clerk.*

627 (*Subpœna.*)

UNITED STATES OF AMERICA,
Northern District of Georgia.

THE RIVERDALE COTTON MILLS, Complainant,
and
ALABAMA AND GEORGIA MANUFACTURING COMPANY, Huguley Manufacturing Company, John M. Chilton, and Welles, Bennett and Welles, Defendants. } In Equity.

The President of the United States to Alabama and Georgia Manufacturing Company, Huguley Manufacturing Company, John M. Chilton, and Welles, Bennett and Welles:

For certain causes offered before the judges of the circuit court of the United States for the northern district of Georgia, in equity, you, and each of you, are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse you personally be and appear at the clerk's office of the said court, in the city of Atlanta, at rules to be had on the first Monday in August (1901) next, to answer to those things which shall then and there be objected to you by the bill of complaint of the Riverdale Cotton Mills, and to do further, and receive what the said court shall have considered in this behalf, and this you may in no wise omit, under penalty of five hundred dollars; and have here this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this tenth day of June, in the year of our Lord one thousand nine hundred and one.

[Seal U. S. Circuit Court.]

O. C. FULLER, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable, otherwise the bill may be taken *pro confesso.*

O. C. FULLER, *Clerk.*

628 In the Circuit Court of the United States for the Northern District of Georgia.

THE RIVERDALE COTTON MILLS, Complainant,
vs.
ALABAMA & GEORGIA MFG. CO., HUGULEY Manufacturing Co., John M. Chilton, and Welles, Bennett & Welles, Defendants.
} No. 1127. In Equity.

Read and considered. It is ordered that the defendants named in the bill of complaint show cause before me at the United States circuit courtroom in Atlanta, Georgia, on the 20th day of June, 1901, at ten o'clock a. m., why an injunction should not issue as prayed for in the bill.

In the meantime and until the hearing is had the defendants are restrained from further proceeding in the cause in the chancery court of Chambers county, Alabama, wherein The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company are complainants, and The Riverdale Cotton Mills and others are defendants, as prayed for in the bill in this cause.

Let copy of this order and subpœna be served on each of the defendants wherever found.

At chambers, Atlanta, Ga., this 10th day of June, 1901.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office June 10th, 1901.

O. C. FULLER, *Clerk.*

Acknowledgment of Service of Subpœna and Order.

We accept service of the within notice and summons in lieu of service by the marshal, but reserving all right of objection to the jurisdiction.

June 10th, 1901.

J. M. CHILTON,
WELLES, BENNETT & WELLES,
Solicitors.

Return and Filing of Subpœna and Order.

Returned into clerk's office and filed June 12, 1901.

O. C. FULLER, *Clerk.*

629 *Answer to Bill and Response to Rule to Show Cause.*

Circuit Court of the United States for the Northern District of Georgia.

THE RIVERDALE COTTON MILLS
v.
THE ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } In Equity.

To the honorable circuit court of the United States for the fifth circuit, sitting for the northern district of Georgia, and to the judges and justices of said court:

Comes the Alabama & Georgia Manufacturing Co., and the Huguley Manufacturing Co., each a corporation under the laws of Alabama, John M. Chilton, and Welles, Bennett & Welles, a partnership, and for answer to an order of this court made and entered in the above entitled cause, requiring them to show cause on the 20th day of June, 1901, why the injunction should not be issued in said cause, says:

First.

These respondents deny that their action in bringing the suit in the Alabama court is or can be construed into a contempt of this court. The complainants in said bill are both, corporations chartered under the laws of Alabama, owning property in Alabama, and are advised that they are not concluded or affected by the proceedings heretofore had in this honorable court since they were not parties thereto. That while said Alabama & Georgia Manufacturing Co. may have been incorporated in the State of Georgia, it was also incorporated in the State of Alabama prior to the incorporation in the State of Georgia. And these respondents aver that there never was, by the action of the State of Georgia and Alabama any merger or consolidation of said two corporations. They therefore, allege that said Alabama & Georgia Manufacturing Company incorporated under the laws of Alabama, was a distinct and separate legal entity from the Alabama & Georgia Manufacturing Company incorporated under the laws of Georgia. And these respondents aver that, as disclosed by the original bill filed in said foreclosure proceedings filed in this honorable court, the Alabama & Georgia Manufacturing Company, as a corporation created under the laws of Georgia was made a defendant thereto and not the Alabama corporation of the same name—the address of said bill being in this respect as follows: "J. J. Robinson as trustee for the purposes hereinafter stated, who avers himself to be a citizen of and residing in the State of Alabama, brings this his bill against the Alabama & Georgia Manufacturing Company, a corporation created under and by virtue of the

laws of the State of Georgia and a resident and citizen of said northern district of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia" &c. That while said Huguley Manufacturing Company,
was alleged in said bill to have been incorporated under the
630 laws of Georgia, the defendants aver that as a matter of fact
it was never so incorporated. This they allege on information and belief. It is also insisted in said Alabama proceedings that the decree of this honorable court in said foreclosure cause is not conclusive upon them, even if they were, in contemplation of law, parties thereto—their insistence in this respect being that this honorable court was without jurisdiction to render said decree both on account of the citizenship of the parties to said proceeding and the fact that a part if not all of the property decreed to be sold was situated in the State of Alabama. But if, by any possible construction, the action of these respondents in bringing the Alabama suit could be held technically a contempt of this court, they disclaim all motive and intention that could make it actually so.

Second.

For further answer, these respondents say that this honorable court is without jurisdiction of this cause or to issue an injunction therein for this: that this proceeding is an original and not an ancillary proceeding, and if the allegations of the bill be true, the complainant is a citizen of the State of Georgia while the defendant corporations are also citizens of the State of Georgia. That, as disclosed by the bill in this cause, no suit to foreclose said mortgage is now pending in this honorable court but on the contrary, is pending in the Supreme Court of the United States.

Third.

For further answer, respondents say that this honorable court is without jurisdiction to issue the injunction prayed. That neither the proceedings in said former cause nor the present proceedings in this court relate to proceedings in bankruptcy, and it is expressly provided by section 720 of the Revised Statutes of the United States as follows: "The writ on injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Fourth.

Further answering, these respondents say that this court ought not to take cognizance of this cause for this: that after the filing of said bill in the chancery court of Alabama all the defendants thereto, including J. J. Robinson as trustee and also including the presena complainant, The Riverdale Cotton Mills, without filing ny plea i n

abatement of said suit, filed therein their demurrers, pleas and answers, setting up substantially the same defenses as are now urged in the original bill in this cause. That as the fact of appearing in said Alabama court is not made to appear in the bill on file, these respondents now attach to their answer to said rule, a copy of said demurrers, pleas and answers, making the same a part hereof and marking the same Exhibit "A."

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Fifth.

For further answer, respondents aver that this court was without jurisdiction of said original foreclosure cause for that the complainant therein and the Huguley Manufacturing Company were citizens of the same State, to wit: the State of Alabama. In this connection, respondents aver on information and belief that said Huguley Manufacturing Company was never incorporated or organized in the State of Georgia although, as they further aver, the solicitors who represented said corporation in said former litigation in this court were not aware it was not so incorporated, and said fact was not discovered until after the filing of said suit in Alabama, and before the bringing of this suit.

Sixth.

Respondents, further answering, say that this honorable court was without jurisdiction to make sale of the property within said mortgage for this: that the Huguley Manufacturing Company was a corporation under the laws of Alabama and not otherwise and that the charter of the Alabama & Georgia Manufacturing Company, granted in the State of Georgia expired by legal limitation, whereby said corporation was dissolved, before any sale was made of said property in said foreclosure proceedings.

Seventh.

Further answering, these respondents say that this court was without jurisdiction to sell said mortgaged property for this: that all of said property was situated in the State of Alabama, as shown by the original filed notes and Government surveys. This they state on information and belief.

Eighth.

For further answer they allege that this honorable court was without jurisdiction to sell that portion of the mortgaged property lying in the State of Alabama. And if mistaken in the averment that all of it is situated in Alabama, they aver that a large and valuable portion of said property was situated in said State of Alabama, as will appear from the mortgage attached as part of the original bill filed in said foreclosure proceedings. Said mortgage is

also attached as an exhibit hereto marked Exhibit "B" as a part hereof. In this connection respondents deny that said property in Alabama and in Georgia are parts of an indivisible whole. On the contrary they aver that the island described in said mortgage as "All of a large island in the Chattahoochee river, designated as Island No. Six (6), containing one hundred and forty-three acres more or less," is not necessary to or used in connecton with the operation of said manufacturing plant but has long been rented from year to year for agricultural purposes.

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Ninth.

Respondents aver again that the Alabama & Georgia Manufacturing Company is a corporation chartered by the laws of Alabama, a copy of which is attached to the bill filed in this cause in exhibiting the record of the above stated suit in Chambers county, Georgia also granted a charter to a company of the same name which as part hereof they attach hereto a copy of its charter and mark the same Exhibit "C." Said charter expired on March 21st, 1896. That the Huguley Manufacturing Company is also a corporation organized under the general laws of Alabama, and a copy of the proceedings organizing the same, including its charter, is hereto attached as Exhibit "D" as part hereof. Respondents aver that these two corporations so organized are the parties complainant to the suit in Alabama. That said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings; that said bill filed in Alabama is a proceeding for redemption, whereas the proceedings in Georgia were proceedings for foreclosure. That the defendants to said bill in Alabama have pleaded, answered and demurred thereto; that said chancery court held its regular term on the 10th day of June, 1901, when said cause was without any notice that the present proceeding had been instituted, or that this honorable court had issued any restraining order, called for trial, and submitted for decision on the demurrers interposed by all the defendants, and was set down for argument. Respondents aver that in this state of the record with the parties to said foreclosure proceedings different from said parties to said Alabama suit; with the issues in the two causes different; and with undoubted jurisdiction of said Alabama court—this court has not jurisdiction to entertain this proceeding or to issue an injunction therein. And respondents aver, that the Riverdale Cotton Mills ought not, after it has invoked the decision of the questions here involved by its plea, answer and demurrer in said Alabama court, be permitted to abandon that court and burden this court with a determination of the same questions.

Tenth.

Respondents state that while said bill in Alabama prays a full accounting in Alabama for the rents and profits received, it was

expected that the respondents would claim credit for the amount paid in under the accounting had in Georgia; and said complainants never intended and do not intend to question the right to all proper credits.

They further state that said suit is instituted in good faith, and without any intention to evade the jurisdiction of this court, or from any disrespect of its orders or decrees. They deny that said suit was instituted for the purpose of harassing or annoying any one, or for the purpose of unnecessarily prolonging the litigation.

Wherefore, these respondents pray that the rule against them be discharged, and that this court issue no other or further order
633 or injunction in this cause, but that it dismiss said bill for want of jurisdiction of the persons and subject matter of said proceedings.

And these respondents pray to be discharged with their reasonable costs in this behalf.

KING & SPALDING,
J. M. CHILTON,
WELLES, BENNETT & WELLES,
Solicitors for Respondents.

STATE OF ALABAMA, }
City and County of Montgomery. }

Before me G. F. Mertins, an acting notary public in and for said county, this day appeared John M. Chilton and Frank L. Welles—the latter a member of the law firm of Welles, Bennett & Welles, each of whom being by me duly sworn on oath says that each is a solicitor for the respondents in this proceeding and is also a defendant thereto. That the statements of fact made in the foregoing answer are true except when the same appear to be made as upon information and belief and that when so made each verily believes the same to be true.

JOHN M. CHILTON.
FRANK L. WELLES.

Sworn to and subscribed before me this 12th day of June, 1901.

[SEAL.]

G. F. MERTINS,
Notary Public, Montgomery Co., Ala.

STATE OF GEORGIA, }
Troup County. }

I, J. H. Nolan, an acting justice of the peace in and for said county do hereby certify that before me on this day appeared William H. Huguley and W. T. Huguley each of whom being duly sworn on oath says that the statements of the foregoing bill are true except when they appear therein to have been made on information and belief and when so made that they verily believe the same to be

true. Said W. H. Huguley further states that he was the last acting president of the Alabama & Georgia Manufacturing Company and as such makes this affidavit. And said W. T. Huguley further states that he is the agent of the Huguley Manufacturing Company in the conduct of these proceedings. That the president of said company resides in the State of Missouri and is inaccessible at the time and place where the foregoing answers were drawn and where this affidavit was made.

W. H. HUGULEY,
President the Alabama & Georgia Manufacturing Company.
WM. T. HUGULEY,
Agent the Huguley Manufacturing Company.

Sworn to and subscribed before me, this 13th day of June, 1901.

J. H. NOLAN,
Justice of the Peace, 701st Dist., G. M., Troup County, Georgia.
[SEAL.]

634 EXHIBIT "A."

In the Chancery Court of Chambers County, Alabama.

THE HUGULEY MANUFACTURING COMPANY and Others
vs.
THE WEST POINT MANUFACTURING COMPANY and Others.

The joint and separate answer, demurrer, pleas, and motion of The Galeton Cotton Mills, Riverdale Cotton Mills, and West Point Manufacturing Company, respondents to the original bill of complaint in the above stated cause.

Come the respondents, The Galeton Cotton Mills, Riverdale Cotton Mills, and West Point Manufacturing Company, and now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can be had or taken by demurrer, motion to dismiss, or otherwise, to the many errors, uncertainties and other imperfections in said complainants' said bill of complaint contained, and for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material and necessary for them to make answer thereunto, these respondents jointly and separately answering say:

1. Answering the first paragraph of the bill of complaint, they deny, on information and belief, that either the Alabama and Georgia Manufacturing Company, or the Huguley Manufacturing Company, was ever a corporation under the laws of the State of Alabama, or that either of them is now a corporation under the laws of the State of Alabama; but, if respondents are mistaken in this, then they aver that each of said corporations was also organ-

ized under the laws of the State of Georgia, and that the officers, directors and stockholders of the said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Alabama, if it were ever so organized, were and so far as it now has any, are the same as the officers, directors and stockholders of the said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Georgia, and that the officers, directors and stockholders of the said Huguley Manufacturing Company as organized under the laws of the State of Alabama, if it were ever so organized, were, and so far as it now has any, are the same as the officers, directors and stockholders of the said Huguley Manufacturing Company as organized under the laws of the State of Georgia; and respondents aver that as long as either of said corporations had any property, said property was situated partly in Georgia and partly in Alabama, and consisted of a manufacturing plant, which was indivisible, and which was operated as one business from the offices of each of said companies at West Point, in the State of Georgia; and said two companies owned no other property than the property which each of them owned as organized under the laws of the State of Georgia, which property is set out and described in the first paragraph of
635 said bill, and certain other personal property operated in connection with said plant. Respondents deny that Exhibit "A" attached to said bill of complaint is a true and correct copy of the charter granted by the General Assembly of Alabama to the said The Alabama and Georgia Manufacturing Company, and call for proof of same; and these respondents deny that the said The Georgia and Alabama Manufacturing Company as organized under the laws of the State of Alabama alone is or was ever seized or possessed of the lands and other property described in said paragraph, but aver that said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Georgia was seized and possessed of all of said lands and property.

2. Answering the second paragraph of said bill of complaint, these respondents say: They admit that the said The Alabama and Georgia Manufacturing Company did execute to the said Robinson, Yancey and Huguley as trustees for the bondholders a mortgage and one hundred and twenty bonds in the amount in the second paragraph of said bill referred to and mentioned; and they aver that the terms of said mortgage are shown by the copy thereof attached hereto as Exhibit "A" and made a part hereof, to which reference is made for greater certainty as to its provisions; and they further aver that said mortgage was executed by the said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Georgia, and was executed at their said office in the city of West Point, in the State of Georgia, and was there delivered, and respondents deny that said Huguley Mfg. Co. constructed any part of said cotton manufacturing plant.

3. Answering the third paragraph of said bill of complaint, these

respondents say: They admit that said Yancey is now dead, and they aver that he died prior to January, 1891. They deny the averment that no steps have been taken by the said trustee Robinson to subject the lands situated in Alabama to the payment of the said mortgage. They admit that no steps have been taken by the said Huguley, trustee, to subject the said property situated in Alabama to the payment of said mortgage, but the reason why said Huguley, trustee, has not taken such steps and the steps which have been taken by said Robinson, will appear in the further answer of these respondents.

4. Answering the fourth paragraph of said bill of complaint, these respondents say: They admit that in January, 1891, J. J. Robinson, one of the trustees under said mortgage, whose residence is correctly stated in said fourth paragraph, did without the concert and co-operation with said W. T. Huguley, surviving trustee, file a bill in the circuit court of the United States for the northern district of Georgia for a foreclosure of said mortgage. They deny that said bill so filed by said Robinson, trustee, prayed for the foreclosure of only a portion of said bonds, and they aver that said bill filed by said Robinson, trustee, prays for the foreclosure of said mortgage
636 for the benefit of all the said bondholders secured thereby and that in the course of said cause in said court all of said bondholders were represented and participated therein. They further aver that prior to the filing of said bill by said Robinson, trustee, to-wit: in 1888, the equity of redemption of said The Alabama and Georgia Manufacturing Company in the property conveyed by said mortgage had by certain judicial proceedings conducted in the superior court of Troup county, Georgia, become the property of The Huguley Manufacturing Company, one of the complainants in this cause, and that said trustee W. T. Huguley was interested in said Huguley Manufacturing Company and adversely interested to the bondholders claiming under said mortgage in which he was named as co-trustee prior to and at the time of the filing of said bill by said Robinson, trustee, in the said circuit court of the United States for the northern district of Georgia. They further aver that in the said bill filed by the said Robinson, trustee, said fact as to the interest of said W. T. Huguley, trustee, was alleged and set forth, and to said bill filed by said Robinson, trustee, said W. T. Huguley, and The Huguley Manufacturing Company, and The Alabama and Georgia Manufacturing Company who are the complainants in this cause, were parties defendant; and that subsequently in said suit instituted by said Robinson, trustee, said W. T. Huguley admitted the fact of his interest in said Huguley Manufacturing Company.

They further aver that the larger part both of the real and of the personal property described in the first paragraph of the bill of complaint filed in this cause was at the time of the filing of said bill by said Robinson, trustee, and is still situated in said northern district of Georgia, and respondents are advised, and upon such advice aver

that upon the facts as they appear by said bill filed by said Robinson, trustee, and as they appear by this answer, said circuit court of the United States for the northern district of Georgia acquired jurisdiction of the said bill filed by the said Robinson, trustee, and of all of the parties interested in said property, including both complainants in this cause, and of all said property situated in both the States of Alabama and Georgia.

They admit that in the said bill filed by the said Robinson, trustee, the said The Alabama and Georgia Manufacturing Company was referred to as a corporation organized under the laws of Georgia, and they aver that the said corporation The Alabama and Georgia Manufacturing Company, made defendant to said bill filed by Robinson, trustee, was the same identical The Alabama and Georgia Manufacturing Company which is a complainant in this suit, and that its place of business was at West Point in said northern district of Georgia, and it was a resident and citizen of said northern district of Georgia at the time of the filing of said bill by said Robinson, trustee, and it never had any place of business in the State of Alabama.

They further aver that said Alabama and Georgia Manufacturing Company appeared in said case filed by said Robinson,
637 trustee, as aforesaid, and defended the same, and that service of process in said suit was duly and regularly made upon W. H. Huguley, president thereof at the time of such service for said The Alabama and Georgia Manufacturing Company. They admit that besides The Alabama and Georgia Manufacturing Company said co-trustee Huguley and The Huguley Manufacturing Company were the only defendants to said bill; and they aver that said Huguley, trustee, and said Huguley Manufacturing Company were each duly and regularly served with process, and each appeared in said suit filed by said Robinson as trustee. They deny the averment that no attempt was made to subject that part of the said property lying in the State of Alabama, and they aver that in said bill filed by said Robinson, trustee, all of said property, whether in Georgia or in Alabama, was sought to be so subjected to said mortgage. They deny that any part of said lands shown by the description of said lands as set out in the first paragraph of the bill of complaint in this cause was or is situated in the State of Alabama and they deny that any part of the same was erroneously described as being in Georgia. They admit that the said sale of said mortgaged lands did not take place in Alabama, but they are not informed whether any advertisement of said sale was made in the State of Alabama, and they aver that both by the terms of said mortgage and of the decrees of sale hereinafter described said property was to be sold and the sale of the same advertised in the State of Georgia, and there was no provision that such sale or advertisement thereof should be made in Alabama. They deny the averment contained in the bill of complaint in this cause, that said W. H. Huguley, as president of the said Alabama and Georgia Manufact-

uring Company was never served with notice of said suit filed b said Robinson, trustee, and was never notified of said default; an they aver that in said suit filed by said Robinson, trustee, it wa averred that there was default in said mortgage and notice there given in accordance with its terms.

Further answering the fourth paragraph of said bill these respond ents say that under the proceedings had in the said suit instituted b the said Robinson, trustee, all of said lands were by order of sai circuit court of the United States, properly and legally sold, in cluding the part of said lands which are situated in the State o Alabama. They admit that the purchasers of said lands at th said sale went into possession thereof. They admit that the pur chasers of said property in 1892 were Lanier, Dallis, and Kirby, representing the bondholders secured by said mortgage, and tha they conveyed or cause- to be conveyed said property to said Galeton cotton mills when said corporation was organized. They admi that said Galeton cotton mills remained in possession of said prop erty until the 6th day of May, 1896, and they aver that the decree of sale of said property rendered in said circuit court of the United States, having been by said court set aside, the purchasers at said sale were by order of said circuit court of the United States for the northern district of Georgia, upon motion of said
638 Huguley Manufacturing Company made in said suit by said Robinson, trustee, required to account, and did fully account to said Huguley Manufacturing Company for all rents and profits of said lands during their possession, and up to the — day of March, 1896, and a portion of said rents and profits so accounted for was paid in cash to and is still retained by said Huguley Mfg. Co. They admit that the first decree of foreclosure of said mortgage rendered by said circuit court of the United States for the northern district of Georgia in said suit filed by said Robinson, trustee, was reversed by the United States circuit court of appeals for the fifth circuit, and that another decree of foreclosure was rendered in said circuit court of the United States for the northern district of Georgia in said cause instituted by said Robinson, trustee, and that at a sale under said last mentioned decree had on the 6th day of May, 1896, said Lanier did purchase said property as trustee for the bond holders secured by said mortgage; and they admit that said sale took place in Harris county, Georgia. They aver that said sale was in all respects regular and in pursuance of the said decree of the circuit court of the United States for the northern district of Georgia, and was in said cause on the 25th day of June, 1896, duly and regularly confirmed by said last mentioned court, and was again confirmed by order of said last mentioned court in said cause on or about the 5th day of October, 1898.

Further answering these defendants aver that through the pur chase by said Lanier, The Riverdale Cotton Mills, respondent in this cause, acquired title to all of the lands of the Alabama and Georgia Manufacturing Company free from all claims of said Hugu-

ley Manufacturing Company, and that since the 5th day of October, 1898, said property and plant have been operated in the name of the Riverdale cotton mills. They aver that after the reversal of the said first decree of sale by the United States circuit court of appeals for the fifth circuit, and after the Galeton cotton mills had accounted to the Huguley Manufacturing Company as above set forth, said L. Lanier, as trustee, for the bondholders secured by said mortgage, went into possession of said property and continued in possession until the conveyance to the Riverdale cotton mills, as hereinabove set forth.

Further answering said fourth paragraph, these respondents say: That after the rendition of said second decree of sale for the foreclosure of said mortgage, which decree was rendered on or about the 10th day of March, 1896, the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company, appealed said cause instituted by said Robinson, trustee, to the United States circuit court of appeals for the fifth circuit, and in the last named court said decree of the circuit court of the U. S. for the northern district of Georgia was in all things affirmed. That subsequently and in the year 1898, other proceedings were had in said circuit court of the U. S. for the northern district of Georgia in said suit instituted by Robinson, trustee, and after said proceedings last
639 mentioned said Huguley Manufacturing Company and said Alabama and Georgia Manufacturing Company, for the third time appealed to the said U. S. circuit court of appeals for the fifth circuit, which said last mentioned court affirmed the said last mentioned decree from which said last appeal was taken on or about the 16th day of May, 1899. Respondents further aver that said decree of affirmance last rendered by the said U. S. circuit court of appeals for the fifth circuit remains unreversed and in full force and effect. They admit that after the last affirmance mentioned above in said suit instituted by said Robinson, trustee, by the U. S. circuit court of appeals for the fifth circuit, said Huguley Manufacturing Company and said The Alabama and Georgia Manufacturing Company heretofore, to-wit: before the first day of June, 1900, sued out an appeal in said cause to the Supreme Court of the U. S., but these respondents aver that said Huguley Manufacturing Company and said The Alabama and Georgia Manufacturing Company have never *bona fide* prosecuted said appeal, and have never superseded said decree of affirmance.

Further answering said fourth paragraph, these respondents say: They deny that the West Point Manufacturing Company is or was a stockholder in said Galeton cotton mills or said Riverdale cotton mills, and they deny that the said West Point Manufacturing Company has ever received any of the rents and profits of the said company, and they deny that the officers, directors and stockholders of the Galeton cotton mills, Riverdale cotton mills, and West Point Mfg. Co., were the same, or that the Galeton cotton mills and the Riverdale cotton mills were "dummy" corporations, and deny that

the West Point Manufacturing Company was or is the owner of the assets of said Galeton cotton mills or of said Riverdale cotton mills and they deny that the West Point Manufacturing Company ever exercised and controlled all or any of the corporate franchises and functions of either of the said two corporations, the Galeton Cotton Mills and the Riverdale Cotton Mills. They deny that the West Point Manufacturing Company had anything to do with the organization of the Galeton cotton mills or the Riverdale cotton mills. Further answering said fourth paragraph, these respondents say: They deny that the rents and profits arising from the portion of said mortgaged property from the 6th November, 1892, to the 6th May, 1896, amounted to the sum mentioned in said paragraph, and they aver that said rents did not exceed $40,000, and they again aver that all of the rents and profits of the said property between the dates mentioned were accounted for by the purchasers of said property under the sale of said property made in 1892 to said Huguley Manufacturing Company, on motion of said Huguley Manufacturing Company, and upon order of said circuit court of the U. S. for the northern district of Georgia, made in 1896, in said suit filed by said Robinson, trustee, and that the same were accepted and are still retained by said Huguley Mfg. Co.

They further aver that said Huguley Manufacturing Com-
640 pany has ever accounted for or returned or offered to account for or return to any of these respondents or to any one else said rents and profits or any of them so accounted for to said Huguley Manufacturing Company by said Galeton cotton mills. They deny that the rents and profits of said property since the 6th day of May, 1896, have amounted to the sum stated in said paragraph, and aver that the amount of said rents and profits was a sum much smaller, to-wit: not more than $40,000; and respondents aver that the amount of said rents and profits since said date in 1896 is immatarial, for that in 1896 by order and decree of said circuit court of the United States for the northern district of Georgia, all of the rights of each of the complainants to this bill to said mortgaged property, and its rents and profits were ended by the sale of said mortgaged property, as hereinabove set forth. They deny that any damage or waste has been committed on or in respect to said property during the possession of the said Galeton cotton mills, or said Lanier or said Riverdale cotton mills, but on the contrary they aver that the purchasers of said property have placed thereon permanent improvements of a large value, to-wit: of the value of $200,000.00 or other large sum.

5. For answer to the fifth paragraph of the bill in this cause, these respondents say: They admit that on the face of said judicial proceedings instituted by the said Robinson, trustee, in the suit instituted by the said Robinson, trustee, in the circuit court of the United States for the northern district of Georgia, it was shown that part of said mortgaged property was situated in the State of Alabama, and they are advised by counsel, and on such advice aver,

that said circuit court of the U. S. for the northern district of Ga. acquired jurisdiction of all of said mortgaged property situated in Alabama and in Geargia upon the filing of said bill by said Robinson, trustee, because of the facts in this answer hereinabove averred and set forth as to the location and character of said property, and the jurisdiction obtained by said court in said cause of the defendants therein; and respondents aver that the title to all of said property, as well that part situated in Alabama as that part situated in Georgia, passed to the said Riverdale cotton mills under said proceedings had in said circuit court of the U. S. They deny that all of said land is situated in Alabama, and aver that only that part of said land is situated in the State of Alabama which is shown to be so situated by the description of said land given in the first paragraph of the bill of complaint in this cause. These respondents deny each and every other allegation contained in said fifth paragraph of said bill not herein expressly admitted.

6. For answer to the 6th paragraph of said bill these respondents say: They deny that said proceedings in said circuit court of the U. S. for the northern district of Georgia in said suit instituted by said Robinson, trustee, were null or void, and deny that all of said lands are situated in the State of Alabama, and they aver that said property is situated partly in Alabama and partly in Georgia as shown by description thereof contained in the first
641 paragraph of the bill of complaint in this cause, and that said property was and is indivisible and consists of one plant operated together and is indivisible and that by the filing of said bill by the said Robinson trustee in the circuit court of the U. S. for the northern district of Georgia, and by the service of process upon the defendants thereto, the said last mentioned court acquired jurisdiction of the said persons and of all of said property, and that all of said proceedings in said suit filed by said Robinson, trustee, were valid, and by said proceedings, said Riverdale cotton mills secured an indefeasible title to all of said lands and property conveyed by said mortgage.

7. For answer to the seventh paragraph of said bill these respondents say: They admit that the said bonds were the property of said bondholders secured by said mortgage, and that said bonds were used to a large extent in the purchase of said property at said sales made under authority of said circuit court of the U. S., but respondents aver that the Riverdale cotton mills have fully paid to L. Lanier trustee for the bondholders the full amount of the purchase price of said property.

Further answering said paragraph these respondents admit that the Huguley Manufacturing Company became the purchaser and acquired the property of said The Alabama and Georgia Manufacturing Company subject to said mortgage executed to said Robinson and others trustees, but they aver that the same occurred in the following manner, to-wit: and not otherwise: That subsequent to the execution and delivery by the said The Alabama and Georgia Manu-

facturing Company of the mortgage of said Robinson and others trustees as hereinabove described and set forth, said Huguley Manufacturing Company by proceedings had in the superior court of Troup county, Ga., and not otherwise, purchased, under a decree rendered in said last mentioned court and not otherwise, all the property of said The Alabama and Georgia Manufacturing Company contained in said mortgage, that the same was sold as an entirety and at said sale said W. H. Huguley — associates became the purchaser of all of said property subject to said mortgage executed to said Robinson and others, trustees, and by the terms of said decree of sale made by said superior court of Troup county, Ga., said sale was made subject to said mortgage made to said Robinson and others trustees as aforesaid, that said sale was made and advertised in Georgia and neither made nor advertised in *Georgia*, nor has said Huguley Mfg. Co. ever acquired any title or claim to the same by proceedings in Alabama. Respondents further aver that all of the proceedings by which said Huguley Manufacturing Company acquired whatever interest it has or had in the property of said The Alabama and Georgia Manufacturing Company by reason of said sale under decree of said superior court of Troup county, Ga., were fully set forth in the proceedings had in the suit instituted by said Robinson, trustee, in said circuit court of the U. S. for the
642 northern district of Ga., and the rights of complainants in this cause, and the rights of all of the parties to the suit instituted by said Robinson, trustee, were therein fully adjudicated and determined.

Further answering said seventh paragraph, these respondents admit on information the allegations as to citizenship, residence, and age of the defendants Robinson and Huguley.

8. These respondents further answering said bill, deny each and every allegation contained therein which has not been expressly admitted herein.

9. For joint and separate plea as well as further answer to said bill of complaint, these respondents say: That by reason of the proceedings had in the U. S. circuit court of the northern district of Georgia, in said cause, wherein J. J. Robinson, trustee was complainant and said The Alabama and Georgia Manufacturing Company *et als.* were respondents, as hereinabove described and set forth, and the averments herein as to which are hereby referred to and made part of this plea, all matters and things by complainants in the bill of complaint in this cause sought to be litigated, have been litigated, adjudicated and determined by a competent court, to-wit, the circuit court of the U. S. for the northern district of Georgia, which had jurisdiction of the subject matter involved in this suit, and jurisdiction of the parties to said suit in said cause in which said J. J. Robinson as trustee was complainant and jurisdiction of both the complainants in this cause and of said trustees under said mortgage foreclosed in said cause from and through whom the respondent Riverdale Cotton Mills acquired their interest in and title to said

property as hereinabove set forth and described. That said proceedings in said U. S. circuit court for the northern district of Georgia remain in full force and effect and are unreversed, whereby these respondents aver that the matters and things sought to be litigated and determined in this cause have been fully adjudicated and determined adversely to the complainants in this cause, and they should not be further allowed to maintain this suit.

10. For further answer to said bill of complaint and by way of plea thereto, these respondents say that they are informed and believe and upon such information and belief charge and state, that the said The Alabama and Georgia Manufacturing Company has never authorized or consented to, either as a corporation under the laws of Alabama or as a corporation under the laws of Georgia, the institution and prosecution of this suit, and the same is now sought to be prosecuted and maintained without the knowledge, authority or consent of said The Ala. & Ga. Mfg. Co.

11. For additional plea and answer in this behalf these respondents say that by section 1273 of the Code of Ala. of 1896, it is provided that the non-user of corporate franchises for a period of five consecutive years is a forfeiture of such franchise, and respondents aver that the said The Alabama and Georgia Manufacturing Company has not used its corporate franchises or any of them or
643 prosecuted any of its business within the State of Alabama for more than five consecutive years before the filing of the said bill in this cause, to-wit: since 1889, and if the said The Alabama and Georgia Manufacturing Company was ever incorporated in the State of Alabama, which respondents do not admit, said The Alabama and Georgia Manufacturing Company has by the non-user of said franchises and by the failure to prosecute any of its business in this State for more than five years before the filing of the bill of complaint in this cause, forfeited all of its said franchises, and under sec. 1300 of the Code of 1896, the said The Alabama and Georgia Manufacturing Company has no right to prosecute this suit.

12. For additional plea and answer in this behalf, these respondents say that by section 1273 of Code of Alabama of 1896, it is provided that the non-user of corporate franchises for a period of five consecutive years is a forfeiture of such franchise, and respondents aver that the said Huguely Manufacturing Company has not used its corporate franchises or prosecuted any of its business within the State of Alabama for more than five consecutive years before the filing of the said bill in this cause, to-wit: since 1889, and if the said Huguley Manufacturing Company was ever incorporated in the State of Alabama, which respondents do not admit, said Huguley Manufacturing Company has by the non-user of said franchises or any of them and by the failure to prosecute any of its business in this State for more than five years before the filing of this bill of complaint in this cause, forfeited all of its said franchises, and under sec. 1300 of the Code of 1896 the said Huguley Mfg. Co. has no right to prosecute this suit.

Now, having fully answered said bill of complaint, these respondents jointly and severally demur thereto and as grounds of demurrer jointly and severally assign the following:

1. There is no equity in said bill.
2. There is a misjoinder of parties complainant.
3. It is shown in and by said bill that complainant The Alabama and Georgia Manufacturing Company conveyed by mortgage said property to said Robinson and others trustees, and that subsequent thereto the equity of redemption of the Alabama and Georgia Manufacturing Company in said property became and is now the property of said Huguley Manufacturing Company.
4. It appears in and by said bill that the Alabama and Georgia Mfg. Co. has now no interest in the property conveyed by mortgage to the said Robinson and others trustees and has no equity of redemption in said property.
5. It is shown in and by said bill that complainants have a full, complete and adequate remedy at law as to any of said property which is situated in the State of Alabama.
6. It is shown in and by said bill that complainants have a full, complete and adequate remedy at law.
7. It is shown in and by said bill that if at the time of the proceedings in the circuit court of the U. S. for the northern
644 district of Ga. any of said property was situated in the State of Georgia, neither of the complainants now has any equity or right of redemption as to or in said property.
8. It is shown in and by said bill that complainant The Alabama and Georgia Mfg. Co. conveyed by mortgage said property to said Robinson and others trustees, and that subsequent thereto the equity of redemption of said The Alabama and Georgia Mfg. Co. therein became the property of said Huguley Mfg. Co., and it further appears in said bill that said mortgage to said Robinson and others trustees has been foreclosed.
9. Complainants in said bill show that they have at most a statutory right of redemption in and to said property, and they do not bring themselves within the statutes of the State of Alabama for and redemption in such cases made and provided.
10. There is a misjoinder of parties complainant, for that complainants seek in and by said bill to enforce distinct and different rights.
11. It is shown in and by said bill of complaint that the matters and things sought to be litigated and determined in this cause have been adjudicated adversely to complainants in a cause to which they were parties and to which the persons with whom these respondents stand in privity, were parties in a court which had jurisdiction of the subject-matter and of the parties complainant in this cause and the said adjudication remains unreversed and in full force and effect.
12. It appears in and by said bill of complaint that another court of competent jurisdiction has jurisdiction acquired prior to the filing

of the bill in this cause, of all matters and things sought to be litigated herein.

13. It appears in and by said bill of complaint that complainants have been guilty of *laches*.

14. It appears in and by said bill of complaint that complainants are guilty of *laches* in that they have permitted all of said proceedings in said cause wherein said Robinson as trustee was complainant to be adjudicated without therein raising or seeking to raise the question of boundary between Georgia and Alabama, or by seeking to raise the question of the jurisdiction of the circuit court of the U. S. for the northern district of Ga. to foreclose said mortgage to Robinson and others trustees.

15. For aught that appears in said bill said Ala. & Ga. Mfg. Co. was and is a corporation under the laws both of the States of Georgia and Alabama.

16. For aught that appears in said bill said Huguley Mfg. Co. was and is a corporation under the laws of both the States of Georgia and Alabama.

17. For aught that appears in said bill said Ala. & Ga. Mfg. Co. and said Huguley Mfg. Co. were and are corporations under the laws both of the States of Georgia and Alabama.

18. It is sought in and by said bill of complaint collater-
645 ally to attack and impeach a decree of another court of competent jurisdiction rendered in a cause to which complainants were parties, and no fraud or other ground of attack therein is offered or set forth in said bill.

19. For aught that appears in said bill of complaint said Huguley Mfg. Co. never purchased or attempted to purchase any more than a statutory right of redemption in the property described in the bill of complaint.

20. It does not appear from said bill whether said Huguley Mfg. Co. acquired the property of the Ala. & Ga. Mfg. Co. before or after the sale of said property through said circuit court of the U. S. for the northern district of Georgia, as set forth in said bill.

21. It is averred as a conclusion of law that said Huguley Mfg. Co. purchased and acquired the property described in said bill and is now the owner of same, and no facts are averred or shown in support thereof.

And these respondents jointly and separately move to dismiss said bill of complaint for that there is no equity therein.

____ ____,

Solicitors for Respondents Named.

(Copy.)

"EXHIBIT A."

STATE OF GEORGIA, }
Troup County. }

At a meeting of the board of directors of the Alabama & Georgia Manufacturing Company, held at the office of said company in the city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present, the following resolutions was adopted:

Whereas, the creditors of the company, namely: George Huguley, W. T. Walker, W. H. Huguley, W. H. Huguley & Co., and others, have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company that the officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st) 7th day of January, 1884, and to run twenty years from date with the option of
646 the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest at the rate of eight per cent. per annum, with interest coupons attached payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the company be and they are hereby authorized and empowered to execute a first mortgage on all of the real property of the company, including mill, machinery, fixtures and all appurtenances thereto attached, either to the holders of said bonds, or to the trustee for their benefit as may be agreed upon. Said bonds and mortgage to be signed by the president under the seal of the company, and countersigned by the secretary, and treasurer. Said bonds to be issued in such denomination as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company, to wit: W. H. Huguley, first president, and W. H. Huguley & Co., its treasurers, and W. T. Huguley, its secretary in conformity with said resolutions have issued the bonds of said company to the amount of sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars due and payable on the (1st) 7th day of January, 1904, with interest coupons attached payable semi-annually on the 7th day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

In which said bonds the said company reserve the right and the privilege to pay off and call in all of or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds are numbered from one to one hundred and thirty, inclusive.

Now this instrument made and entered into on this the 1st day of January, 1883, between the Alabama and Georgia Mfg. Co. of the first part, and J. J. Robinson, W. C. Yancey and W. T. Huguley, as the trustees of said bonds, of the second part; witnesseth, that the Alabama and Georgia Manufacturing Company, the said party of the first part, for and in consideration of the premises and for the purpose of securing the payment of principal and interest of said bonds, and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed, and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees,
647 aforesaid, their survivors and successors, the following real estate, to wit: All of a large island in the Chattahoochee river designated as Island No. Six (6) containing one hundred and forty-three (143) acres, more or less; also Island No. Nine (9) containing seven acres, more or less; also a small island between Islands Numbers Nine and Six upon which the east end of the factory building rests, containing four acres, more or less. All of the three above described islands being in the twentieth (20) district of Harris county, Georgia. Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by the said river beginning at a point on the west bank of said river nearly opposite the center of the seven-acre island at a black gum, at or near a place known as Sulb's corner—thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell joined, known as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the river, and thence down the bank of the river to the beginning corner—containing sixty-five 23-105 acres more or less, lying and being in Chambers county, State of Alabama, and being a part of section- twenty-eight (28) and twenty-nine (29), township twenty-one (21), range twenty-nine (29), as well as forty (40) foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, their survivors and successors in trust, nevertheless and for the uses and purposes herein set forth, that is to say, upon trust for securing and providing for the full and complete payment of the aforesaid sum of sixty-five thousand dollars ($65,000) with

the interest due and owing by the said Alabama and Georgia Manufacturing Company to the holder or holders of the said bonds or the coupons thereto attached hereinbefore referred to and described, and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguley, or a majority of them, or their survivors or successors are hereby authorized and empowered, should default be made in the payment of said bonds, when they fall due, or in the payment of the
648 interest on said bonds as it shall approve, then immediately on such default being made known by the holder or holders of said bonds, or holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment of the said interest or principal as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama and Georgia Manufacturing Company upon giving sixty days' notice of the time and place of sale together with a description of the property in a newspaper published in Atlanta, Lagrange and West Point, Georgia, to proceed to sell at public auction at the office of said company in the city of West Point, Georgia, for cash, the property herein conveyed, or a sufficient amount of the same to pay the amount due, and apply the proceeds of sale, first, to the expense of sale; second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus, if any, to be paid over to the proper officer of said company, and to execute titles to the purchaser thereof, and in the event the amount realized from the said (sale) of said property shall be sufficient to liquidate the whole of said debt, then the same shall be prorated amongst the holders of said bonds and coupons. And for the further security of the holders of said bonds and coupons, the said Alabama and Georgia Manufacturing Company hereby stipulates and agrees that it will keep this factory building and machinery insured against loss by fire in good and responsible insurance companies to the extent of sixty thousand dollars, and on their failure to do so, the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment, said bonds and coupons and the said Alabama and Georgia Manufacturing Company hereby reserve to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same and dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed, until after default is herein divided. Now, if the said Alabama and Georgia Manufacturing Company shall pay off and discharge all said bonds and coupons, then, and in that event, this conveyance to be null and void.

In witness whereof, *M.* H. Huguley, the president of said company, and W. T. Huguley, the secretary, and W. H. Huguley & Co., the treasurers of said company, have hereunto set their
649 hands and affixed the seal of said company at its office in the city of West Point, on the 2d day of January, 1884.

W. H. HUGULEY, *President.* [L. S.]
W. T. HUGULEY, [L. S.]
Vice-President and Secretary.
W. H. HUGULEY & CO., *Treasurers.* [L. S.]

(Copy.)

Signed, sealed and delivered in the presence of:
W. E. OSLIN.
L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust reposed by the same.

J. J. ROBINSON. [L. S.]
WM. C. YANCEY. [L. S.]
W. T. HUGULEY. [L. S.]

Signed, sealed and delivered in presence of:
W. E. OSLIN.
L. M. HARRIS, *J. P.*

Filed in office for record, January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate.

Filed in clerk's office, 21st day of January, 1891.
O. C. FULLER, *Clerk.*

EXHIBIT "B."

STATE OF GEORGIA, }
Troup County. }

At a meeting of the board of directors of the Alabama & Georgia Manufacturing Company, held at the office of said company in the city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present, the following resolutions was adopted:

Whereas, the creditors of the company, namely: George Huguly, W. T. Walker, W. H. Huguley, W. H. Huguley & Co., and others, have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company that
650 officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st) 7th day of January, 1884, and to run twenty years from date with the option of the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest coupons attached payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the company be and they are hereby authorized and empowered to execute a first mortgage on all of the real property of the company, including mill, machinery, fixtures and all appurtenances thereto attached, either to the holders of said bonds, or to trustee for their benefit, as may (be) agreed upon. Said bonds and mortgage to be signed by the president under the seal of the company, and countersigned by the secretary and treasurer. Said bonds to be issued in such denomination as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company, to wit: W. H. Huguley, first president, and W. H. Huguley & Co., its treasurers, and W. T. Huguley, its secretary, in conformity with said resolution, have issued the bonds of said company to the amount — sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars, due and payable on the (1st) 7th day of January, 1904, with interest coupons attached payable semi-annually on the 7th day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

In which said bonds the said company reserved the right and the privilege to pay off or call in all or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds were numbered from one to one hundred and thirty, inclusive.

Now this instrument made and entered into on this the first day of January, 1883, between the Alabama & Georgia Mfg. Company of the first part, and J. J. Robinson, W. C. Yancey and W. T. Huguley, as the trustees of the holders of said bonds, of the second part; witnesseth, that the Alabama & Georgia Manufacturing Com-
651 pany, the said party of the first part, for and in consideration of the premises and for the purposes of securing the payment of the principal and interest of said bonds and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed, and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees aforesaid, their survivors and successors, the following real estate, to-wit:

All of a large island in the Chattahoochee river, designated as Island Number Six (6), containing one hundred and forty-three (143) acres more or less; also Island Number Nine (9), containing seven acres more or less, also a small island between islands numbers nine and six upon which the east end of the factory building rests, containing four acres more or less. All of the three above described islands being in the twentieth (20) district of Harris county, Georgia.

Also, all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above described island, bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the center of the seven acre island at a black gum, at or near a place known as Sulb's corner—thence a straight line to a point where the land, owned in 1868 by Mrs. Freeman, Jobe Ross and James Campbell, joined, known then as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning point—containing sixty-five 23-105 acres more or less, lying and being in Chambers county, State of Alabama, and being a part of sections (28) twenty-eight and twenty-nine (29), township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right-of-way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, their survivors and successors in trust, nevertheless and for the uses and purposes herein set forth, that is to say, upon trust for securing and providing for the full and complete payment of the aforesaid sum of sixty-five thousand dollars ($65,000), with interest due and owning [owing] by the said Alabama &
Georgia Mfg. Co. to the holder or holders of the said bonds or
652 the coupons thereto attached hereinbefore referred to and described, and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguley, or a majority of them, or their survivors or successors, are hereby authorized and empowered, should default be made in the payment of said bonds when they fall due, or in the payment of the interest on said bonds *approve* "(accrue)," then immediately *on* should default be made known by the holders or holders of said bonds or holders of the coupons attached thereto, and if after notice is served on the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment, if the said interest and principal as the case may be,

and at the request of any one or more of the holders of said bond or coupons, and without any other or further authority from th said Alabama & Georgia Mfg. Co., upon giving sixty (60) day notice of the time and place of sale, together with a description o the property in a newspaper published in Atlanta, La Grange an West Point, Georgia, to proceed to sell at public auction at the offic of said company in the city of West Point, Georgia, for cash, th property herein conveyed, *for* a sufficient amount of the same t pay the amount due, and apply the proceeds of sale, first to the ex pense of the sale; second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus, if any, to be paid over to the proper officer of said company, and to execute title to the purchaser thereof, and in the event the amount realized from the sale of said property shall be sufficient to liquidate the whole of said debt, then the same shall be prorated amongst the holders of said bonds and coupons.

And for futher security of the holders of said bonds and coupons, the said Alabama & Georgia Mfg. Co., hereby stipulate- and agree- that it will keep this factory building and machinery insured against loss by fire in good and responsible companies to the extent of sixty thousand dollars, and on their failure to do so the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment (of) said bonds and coupons, and the said Alabama & Georgia Mfg. Co. hereby reserved to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same, and to dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed, until
653 after default as herein provided. Now, if the said Alabama & Georgia Mfg. Co. shall pay off and discharge all said bonds and coupons, then, and in that event this conveyance to be null and void.

In witness whereof, W. H. Huguley, the president of said company, and W. T. Huguley, the secretary, and W. H. Huguley & Co., the treasurers of said company, have hereunto set their hands and affixed the seal of said company at its office in the city of West Point, on the second day of January, 1884.

W. H. HUGULEY, *President.* [L. S.]
W. T. HUGULEY, [L. S.]
Vice-President and Secretary.
W. H. HUGULEY & CO., *Treasurers.* [L. S.]

Signed, sealed and delivered in the presence of:

W. E. OSLIN.
L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust imposed by the same.

J. J. ROBINSON. [L. S.]
WM. C. YANCEY. [L. S.]
W. T. HUGULEY. [L. S.]

Signed, sealed and delivered in the presence of:

W. E. OSLIN.
L. M. HARRIS, *J. P.*

Filed in office for record January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate.

Filed in clerk's office 21st day of January, 1891.

O. C. FULLER, *Clerk.*

EXHIBIT "C."

No. 160.

An act to incorporate the Alabama and Georgia Manufacturing Company.

SEC. I. Be it enacted, by the senate and house of repre-
654 sentatives of the State of Georgia, in General Assembly met, That James Metcalf, George Huguley, Benjamin H. Hill, William P. Chilton, and Geo. W. Huguley, together with such other persons as may hereafter be associated with them and their sucessors, be, and they are hereby made and constituted a body corporate in fact and in name, under the name, style and title of the Alabama and Georgia Manufacturing Company, and by that name shall be, and are hereby made able and capable at law, to have, hold, receive, purchase, possess and enjoy, to them and their successors, all real and personal estate, of whatever kind or amount said corporation may deem necessary to carry all the objects of said corporation into full force and effect, and may sell, grant, convey, or otherwise dispose of the same, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts having competent jurisdiction; to make, use, and have a common seal, and the same to alter, break, and renew at pleasure, and to do all other acts incident to a body corporate and politic.

SEC. II. That the objects of said corporation shall be the manufacture of wool and cotton into thread and cloth, the manufacture of meal, flour, lumber, shingles, boards, and machinery of any description, or such branches or parts thereof as they see proper to

engage in. And to enable the said persons named in the first s
tion of this charter to carry out the purposes of this charter, th
and their successors, and associates, may control and use the wat
of the Chattahoochee river, so far as the riparian rights of this Sta
are concerned, by locks, dams. canals, or otherwise, for manufactu
ing purposes generally; provided, that nothing in this act shall b
so construed as to give said corporators, or their successors, the priv
lege to interfere with, or disturb the vested rights of any person o
persons whomsoever, either on the east or west bank, or islands in
the Chattahoochee river, and that said dams, locks, and canals
shall not extend more than half way across said river, from the wes
side, and to secure their property against loss by fire, or other in
juries, may prevent persons from building fires, or camping, within
two hundred yards of the factory buildings.

SEC. III. That said body corporate shall have power to prescrib
the number of shares into which the capital stock of said corporation
shall be divided, the mode in which it shall be taken, paid, trans
ferred, or assigned, and also to provide the mode by which stock-
holders may vote, and the number of votes to which each share shall
be entitled; that the rules adopted shall be uniform, equally securing
the rights of each stockholder, and also to provide for the
655 election of such officers as may be deemed necessary for the
government and management of the affairs of the corpora-
tion; to ordain, establish, and put into execution, such by-laws
ordinances, and resolutions, as they shall deem necessary and ex-
pedient for the government of said corporation, not inconsistent with
the constitution and laws of the State of Georgia, or of the United
States, and in general to do and execute all and singular the acts,
matters, and things, which may be deemed necessary for manu-
facturing.

SEC. IV. That said corporation shall not exercise banking privi-
leges, but is authorized to carry the foregoing granted powers into
execution, according to the true intent and meaning thereof.

SEC. V. That said corporation shall have power to borrow money
on mortgage, or other security, and to loan out its surplus earnings
on similar securities, or mortgage, and to ordain such rules and
regulations with respect to stockholders who refuse to pay up any
balance on their stock, as will compel them to pay upon penalty of
forfeiting such stock to said corporation; provided, that no stock-
holder shall be liable beyond the amount of his, her, or their stock.

SEC. VI. That said corporation shall have the right and privilege
to build, erect, make and preserve all dams, locks, canals, abutments,
or other needful structures half-way across said Chattahoochee river,
as may be necessary to give them the greatest amount of water
power, and to use for that purpose the islands contiguous to their
lands for abutments and dams, and to erect all needful buildings on
the east side of the river, and to carry on any of the business and
manufactures, or any branch, or branches, of the same, in this State,
that said charter authorizes them to engage in, or carry on in the

State of Alabama, and generally to do all acts coming within the legitimate scope of their business and objects aforesaid, which usually belong to bodies corporate and politic.

SEC. VII. That the private property of the stockholders shall be liable for the debts of said corporation, to the amount of their subscribed stock not paid in at the time any suit may be commenced.

SEC. VIII. That the capital stock of said company shall be fifty thousand dollars, with permission to increase the same to one million of dollars, which stock shall be divided into shares of one hundred dollars each.

SEC. IX. That nothing in this act shall be so construed as to prevent the legislature from taxing the property of said company as other property in this State.

SEC. X. That said corporation shall not organize and com-
656 mence business until the capital stock shall have been subscribed, and ten per cent. of the same paid in.

SEC. XI. That the place of business of said corporation shall be Columbus, Georgia, or La Grange, Georgia.

Approved 21st March, 1866.

EXHIBIT "D."

(*Alabama Charter.*)

The Huguley Manufacturing Company. Declaration. Book of Corporations—A., pp. 35–42.

Be it known: That the undersigned, W. T. Huguley, Thomas H. Whitaker and John M. Chilton, desiring to form a corporation, do hereby make this their declaration:

First. Said W. T. Huguley is a resident of West Point, in the State of Georgia; Thomas H. Whitaker is a resident of the town of La Grange, in the same State; John M. Chilton is a resident of the city of Opelika, State of Alabama.

Second. The name and style of the proposed corporation shall be "The Huguley Manufacturing Company."

Third. The amount of the capital stock shall be ten thousand dollars, to be divided into one hundred shares of one hundred dollars each.

Fourth. The general purposes of the corporation is the manufacture of yarns and cloth from cotton or wool; the grinding of grain, the operating of a general store for the benefit of its operatives; and generally, the purpose is to do and perform all such acts as are incident to such corporations, and said corporations shall have all the powers conferred upon such corporations by chapter 2, of part 1; of title 1, of the Code of Alabama of 1876.

Fifth. The principal place of business shall be at Elliott's Store,

in Chambers county, Alabama, near the factory, lately known as the "Alabama and Georgia mills."

THOS. H. WHITAKER.
W. T. HUGULEY.
JOHN M. CHILTON.

Filed in office, Feb'y 27, 1890, and W. T. Huguley, Thomas H. Whitaker, and John M. Chilton, appointed commissioners.

J. J. ROBINSON,
Judge of Probate.

657 *Commission.*

STATE OF ALABAMA, }
Chambers County. }

To W. T. Huguley, Thos. H. Whitaker, and John M. Chilton:

Whereas, you have this day filed in the office of the judge of probate of Chambers county, your declaration in writing, praying to be formed into a corporation under the name and style of "The Huguley Manufacturing Company," complying in said declaration with section 1568, of the Code of Alabama;

You are hereby authorized, as commissioners, to open books of subscription to the capital stock of said proposed corporation, at such time and place, and upon such notice as you may appoint.

J. J. ROBINSON,
Judge of Probate, Chambers County, Ala.

Issued this 27th Feb'y, 1890.

J. J. ROBINSON,
Judge of Probate.

Organization.

In the Matter of "THE HUGULEY MANUFACTURING COMPANY."

Organization proceedings.

BLUFFTON, CHAMBERS COUNTY, ALA., *Feb'y* 27, 1890.

This being the day and hour fixed by the call of the commissioners, appointed by Hon. J. J. Robinson, judge of probate of said county, to act in the premises; and all of the subscribers to the capital stock of "The Huguley Manufacturing Company" having had personal notice of the time and place of this meeting, and all being present, that is to say, W. H. Huguley & Co. (by W. T. Huguley and J. H. Nolan, partners in said firm), subscribers to ninety-two (92) shares; John T. Higgenbotham, subscriber to four (4) shares; Thos. H. Whitaker, subscriber to two (2) shares—said subscribers proceeded to the further organization of said corporation.

Said subscribers thereupon elected the following board of directors from among the subscribers: W. H. Huguley, W. T. Huguley, J. H. Nolan, J. M. Chilton, and Thos. H. Whitaker. Said board to hold office for a term of twelve months from this date. Said board also elected the following officers, to-wit:

President, W. T. Huguley;
Vice-president, Wm. H. Huguley;
Treasurer, W. H. Huguley & Co.;
Secretary, Harrell D. Huguley.

Said officers to hold twelve months from date.

658 On motion, W. T. Huguley was elected the officer of the corporation to whom the subscriptions to the capital stock should be turned over by the commissioners.

J. M. CHILTON.
T. H. WHITAKER.
J. T. HIGGENBOTHEM.
W. H. HUGULEY & CO.

Filed in office, Feb'y 28, 1890.

J. J. ROBINSON,
Judge of Probate.

Report of Organization.

STATE OF ALABAMA, }
Chambers County. }

To Hon. J. J. Robinson, judge of probate of said county:

The undersigned, W. T. Huguley, who has been elected and designated by the board of directors of "The Huguley Manufacturing Company" its officer to receive from the commissioners, heretofore appointed by your honor, the subscriptions by them received to the capital stock of said corporation, does hereby certify that he has received from said commissioners the following subscriptions in writing:

STATE OF ALABAMA, }
Chambers County. }

Books of subscription to the capital stock of the Huguley Manufacturing Company having this day been opened by W. T. Huguley, Thos. H. Whitaker, and John M. Chilton, commissioners appointed for the purpose by Hon. J. J. Robinson, judge of probate of said county (Chambers), we, the undersigned, do hereby subscribe to the number of shares and amounts set opposite our respective names, to-wit:

Thos. H. Whitaker, 2 shares	$200.00
Jno. T. Higgenbothem, 4 shares	400.00
John M. Chilton, 2 shares	200.00
W. H. Huguley & Co., 92 shares	9200.00

The subscriptions of said Whitaker, Higgenbothem and Chilton are made with the privilege of discharging the same by the rendition of stipulated necessary services or the performance of stipulated necessary labor; and the subscription of W. H. Huguley & Co. is made with the privilege of discharging the same by a conveyance to the corporation at its real value of real estate which the corporation has power to acquire. Said property is as follows:

659 Sixty-five (65) acres of land, upon which stand all the dwelling houses, superintendent's house, warehouse, shops and pickerhouse, etc., etc.

It is bounded on the north by the Chattahoochee river and John Weaver; on the west by the lands of B. T. Smith; on the south by the lands of B. T. Smith, and on the east by the Chattahoochee river.

Said W. H. Huguley & Co. agree to convey said lands to said corporation within twelve (12) months.

JOHN M. CHILTON.
W. H. HUGULEY & CO.
THOS. H. WHITAKER.
JNO. T. HIGGENBOTHEM.

STATE OF ALABAMA, }
County of Chambers. }

Before me, George N. Croft, justice of the peace in and for said county, in person appeared W. T. Huguley, who being duly sworn, deposes and says that the foregoing subscriptions contract is a true copy of the original of which it purports to be a copy. That he has received from Jno. T. Higgenbothem, J. H. Chilton and Thos. H. Whitaker, who reserved the privilege of discharging their subscription by the rendition of specified labor for said corporation, contracts in writing, signed by them, binding each to perform stipulated services or labor for said corporation. That he has received from W. H. Huguley & Co., who reserve the right of discharging their subscriptions by the conveyance of property, their agreement in writing, signed by them, agreeing to convey to said corporation, twelve months after this date, the property described in the foregoing subscription contract.

W. T. HUGULEY.

Sworn to and subscribed before me, this 27th day of Feb'y, 1890.

G. N. CROFT,
Not. Pub. & Ex-officio Justice of Peace,
Chambers Co., Alabama.

Filed in office, Feb'y 28, 1890, and certificate of organization issued.

J. J. ROBINSON,
Judge of Probate.

680 Certificate of Incorporation, Book "A," pp. 35–42.

Huguley Manufacturing Company.

Certificate of Incorporation.

STATE OF ALABAMA, }
Chambers County. }

To W. H. Huguley & Co., Jno. T. Higgenbothem, John M. Chilton, and Thos. H. Whitaker:

Whereas it appearing from papers on file in the office of the judge of probate, of the county of Chambers, State of Alabama, that such proceedings have been had under and in pursuance of chapter five, part 2, title 1, of the Code of Alabama, as entitled you to be and become a corporation under the name and style of "The Huguley Manufacturing Company."

Now, be it known, that you are duly organized as a corporation under said corporate name and style; and for the purpose expressed in the declaration on file in this office, having the power, capacity and authority conferred by law.

Witness my hand, this 28th day of February, A. D. 1890.

J. J. ROBINSON,
Judge of Probate.

Filed Feb. 28th, 1890.
Filed in clerk's office June 21, 1901.

O. C. FULLER, *Clerk.*

Opinion.

In the Circuit Court of the United States for the Northern District of Georgia.

RIVERDALE COTTON MILLS
vs.
ALABAMA & GEORGIA MANUFACTURING Co. *et al.* } No. 1127. In Equity.

I am satisfied that under any view of this case an injunction should be granted at present to remain in force until the appeal now pending in the Supreme Court of the United States is determined. It seems to me clear that pending the appeal from the decision of this court and the circuit court of appeals, the defendant should not be permitted to prosecute, nor complainant required to defend the suit instituted in Alabama. The purpose of this injunction will be to preserve the existing status pending the final determination of the case originating here.

661 I think there can be no doubt of the power of the court to do this on an ancillary dependent bill such as that presented in this case.

16 A. & E. Enc. of Law, p. 413.

In the case of French trustee *vs.* Hay, 22 Wall., 250, in the opinion by Mr. Justice Swayne, this language is used:

"The order of the court below, annulling the decree upon which the suit at law in Pennsylvania was founded, was fatal to that action, and entitled Hay to a perpetual injunction, without reference to the final result of the prior case.

This bill is not *an original one.* It is auxiliary and dependent in its character, as much so as if it were a bill of review. The court having jurisdiction *in personam*, had power to require the defendant to do or to refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory. Having the possession and jurisdiction of the case, that jurisdiction embraced everything in the case, and every question arising which could be determined in it until it reached its termination and the jurisdiction was exhausted. While the jurisdiction lasted it was exclusive and could not be trenched upon by any other tribunal. The court below might, upon a cross-bill, and perhaps, upon motion, have given the relief which was given by the interlocutory and final decree in the case before us.

If it could not be given in this case the result would have shown the existence of a great defect in our Federal jurisprudence, and have been a reproach upon the administration of justice. In that event the payment of the annulled decree may be enforced in Pennsylvania, and Hay, notwithstanding the final decree in that case, and in this case, would find himself in exactly the same situation he would have been if those decrees had been against him instead of being in his favor. They would be nullities as regards any protection they could have given him. Instead of terminating the strife between him and his adversary they would leave him under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice.

The prohibition in the judiciary act against the granting of injunctions by the courts of the United States touching proceedings in State courts has no application here. The prior jurisdiction of the court below took the case out of the operation of that provision."

In Deitzsch *vs.* Huidekoper, 103 U. S., 494, in the opinion by Mr. Justice Woods, it is said:

"A court of the United States is not prevented from en-
662 forcing its own judgment by the statute which forbids it to grant a writ of injunction to stay proceedings in a State court. Deitzsch, the original plaintiff in the action on the replevin bond, represented the real parties in interest, and he was a party to the action of replevin, which had been pending, and was finally deter-

mined in the United States circuit court. That court had jurisdiction of his person, and could enforce its judgment in the replevin suit against him, or those whom he represented, their agents and attorneys. The bill in this case was filed for that purpose and that only.

If the bill is not maintainable, then appellees would find themselves in precisely the same plight as if the judgment of the United States circuit court in the replevin suit had been against them, instead of for them. The judgment in their favor would settle nothing. Instead of terminating the strife between them and their adversaries, it would leave them under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice.

As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law, and the court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by direct proceeding. These views are sustained by the case of French trustee *vs.* Hay (22 Wall., 250), between which and this case there is no substantial difference."

See also Cole *vs.* Cunningham, 133 U. S., 107; Root *vs.* Woolworth, 150 U. S., 401.

The provision of Revised Statutes sec. 720, that no writ of injunction shall be granted by any court of the United States to stay proceedings in a State court, does not apply where jurisdiction of the Federal court has first attached. Fiske *vs.* Railway, 10 Blatch., 520 (Fed. Case 4830); Lanning *vs.* Osborne, 79 Fed., 657; Terre Haute & I. R. Co. *vs.* Peoria & P. U. R. Co., 82 Fed., 943; Fidelity &c. Co. *vs.* Norfolk & W. R. Co., 88 Fed., 815.

The fact that an appeal is pending does not in my opinion prevent the circuit court, in a proper case, from taking such action as will protect the property and preserve the rights of the parties until the appeal can be determined. 2 Enc. of P. & P., 330–331; Hinson *vs.* Adrian, 91 N. C., 372.

In Allen *vs.* Allen, 80 Ala., 154, it is held that notwithstanding an appeal the chancellor rendering the decree may take steps
663 to prevent the abuse of the process of the court. Summerville, J., delivering the opinion of the court, used this language:

"The chancellor very clearly erred in dismissing the motion made by the appellant to set aside the sale of the lands in controversy, upon the theory that the appeal pending in this court deprived him of all jurisdiction of the matter. We do not doubt that when a decree has been rendered by a court of equity, and an appeal has been prosecuted to this court from such decree, a chancellor would no longer have such jurisdiction of the cause as would enable him to

render any further decree affecting the rights and equities of the parties in the same cause during the pendency of the appeal.

"The present motion, however, is a separate and distinct proceeding from the chancery suit which culminated in the decree from which the appeal in question was taken. It is based upon grounds which have nothing to do with the equities involved in and settled by the decree, and which have been originated subsequent to its rendition. The purpose of the motion is not to raise any question going behind the decree or concluded by it, but only to prevent any abuse of the process of the court by the agency of which it is sought to enforce the execution of the decree."

This is sustained also by decisions of the Supreme Court of the United States, Jennings *vs.* Carson, 4 Cranch 2 (and particularly the language of Chief Justice Marshall in the opinion on pages 24 and 25); also Spring *vs.* South Carolina Ins. Co., 6 Wheat., 518.

I do not think the cases of Draper *vs.* Davis, 102 U. S., 370; Ensminger *vs.* Powers, 108 U. S., 292; Keyser *vs.* Farr, 105 U. S., 265; Citizens' Bank of Wichita *vs.* Farwell, 56 Fed., 539, and Morrin *vs.* Lawler, 91 Fed., 693, cited by defendants' counsel, are applicable to the question presented here.

An injunction, as prayed, will issue, to remain of force until the further order of the court. When the appeal pending in the supreme court has been disposed of, further direction will be given the matter either upon argument or without it, as counsel may prefer.

This October 8th, 1901.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office, 8 day of Oct., 1901.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy.*

664 *Motion to Strike Answer, &c.*

In the Circuit Court of the United States for the Northern District of Georgia,

RIVERDALE COTTON MILLS
vs.
THE ALABAMA & GEORGIA MANUFACTURING COMPANY *et al.* } No. 1127.

Bill of complaint.

Now comes the plaintiff, and moves the court that the answer filed by the defendants be stricken from the file, because said answer is no answer to the bill, but the same is so evasive that it is obviously under the law, a mere delusion. It controverts no material allega-

tion of the bill nor makes any attempt to answer the same; therefore the same should be stricken from the file.

T. H. WATTS,
B. F. ABBOTT, AND
DORSEY, BREWSTER & HOWELL,
Plaintiff's Att'ys.

Let notice of the foregoing motion be given counsel for defendants, and it is ordered that they show cause before me on June 21st, 1902, why said answer should not be stricken from the file.
June 19th, 1902.

WM. T. NEWMAN,
U. S. Judge.

A copy of the within has been this day received.
June 20th, 1902.

KING & SPALDING,
Def'ts' Att'ys.

Filed in clerk's office 20 day of June, 1902.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy*.

665 *Final Decree.*

In the Circuit Court of the United States for the Northern District of Georgia.

RIVERDALE COTTON MILLS
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

This case coming on further to be heard, it is submitted upon the bill and proceedings in this cause ancillary to the proceedings in the cause lately pending in this court of J. J. Robinson, as trustee, etc., against Alabama & Georgia Manufacturing Company, *et al.*, and upon the record in said last named cause.

Upon consideration, the court is of the opinion that the complainant—Riverdale Cotton Mills—is entitled to the relief prayed in said ancillary bill. It is therefore ordered, adjudged and decreed that the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, J. M. Chilton and Welles, Bennett & Welles, attorneys and solicitors, and all other persons claiming to act under or by the authority, direction or control of or for said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, either or both, be, and they are hereby commanded to absolutely desist and refrain from the further prosecution of the suit described in said ancillary bill as pending in Chambers county,

State of Alabama, instituted against said Riverdale Cotton Mills, West Point Manufacturing Company and others; and the said Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company, and all other persons claiming to act under the direction, authority or control of or for said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, either or both, are hereby commanded to absolutely desist and refrain from the commencement or prosecution of any other suit or proceedings against said Riverdale Cotton Mills or against any person or corporation under, by or through whom said Riverdale Cotton Mills derived the said property described in said ancillary bill as to any matters involved and adjudicated on which could have been involved and adjudicated in the said cause of J. J. Robinson, as trustee, etc., against Alabama & Georgia Manufacturing Company, *et al.;* and the said Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company, and all other persons claiming to act by or under the authority, direction or control of or
666 for said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, either or both, be and they are hereby forever enjoined from in any manner interfering with the possession or enjoyment of said property in said ancillary bill mentioned by said Riverdale Cotton Mills or with the possession or enjoyment of said property or any part thereof by any person or corporation claiming by, through or under the said Riverdale Cotton Mills.

It is further ordered, adjudged and decreed that the said Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company, pay the costs of this proceeding, for which let execution issue.

This the 29th day of September, 1902.

WM. T. NEWMAN,
Judge of the Circuit and District Courts of the United States for the Northern District of Georgia.

Filed in clerk's office 29 day of Sept., 1902.

O. C. FULLER, *Clerk,*
By J. D. STEWARD, *Deputy.*

Petition and Order Allowing Appeal.

In the Circuit Court of the United States for the Northern District of Georgia.

ALABAMA & GEORGIA MANUFACTURING COMPANY and THE HUGULEY Manufacturing Company, Defendants, Appellants,
vs.
RIVERDALE COTTON MILLS, Complainant, Appellees.

The above named defendants, The Alabama & Georgia Manufacturing Company, and The Huguley Manufacturing Company, a

corporation created and organized under the laws of the State of Alabama, conceiving themselves aggrieved by the final decree entered on the 29th day of September, 1902, in the above entitled cause, doth hereby appeal from said order to the circuit court of appeals for the fifth circuit of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which decree was made, duly authenticated, may be sent to the said court of the United States.

MARION ERWIN,
Solicitor and Attorney for Appellants.

667 And now, to-wit: on this 21 day of March, 1903, it is ordered that the foregoing appeal be allowed as prayed for.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office, 21st day of M'ch, 1903.

O. C. FULLER, *Clerk.*

Declination of Welles, Bennett & Welles to Join in Appeal.

Notice of appeal.

To Welles, Bennett & Welles, a firm composed of John C. Welles, Claude N. Bennett, and Frank L. Welles, attorneys and solicitors, Washington, D. C.

DEAR SIRS: Take notice that on the 21st day of March, 1903, before one of the judges of the circuit court of the United States for the northern district of Georgia, at Atlanta, Ga., The Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company, parties with you defendant, in the equity cause of Riverdale Cotton Mills *vs.* The Alabama & Georgia Manufacturing Company *et al.*, lately pending in the circuit court of the United States for the northern district of Georgia, will enter and ask the allowance of an appeal to the circuit court of appeals of the United States for the fifth circuit from the final decree rendered on the 29th day of September, 1902, by the circuit court of the United States for the northern district of Georgia. You are requested to join in said appeal.

MARION ERWIN,
Solicitor for Alabama & Georgia Mfg. Co. and Huguley Mfg. Co.

Service of above notice acknowledged and the undersigned having no interest in the matter other than that of a solicitor as appears of record in said cause, decline to join in said appeal.

Dated at Washington, D. C., this 19th day of M'ch, 1903.

WELLES, BENNETT & WELLES.

Filed in clerk's office, 21st day of M'ch, 1903.
O. C. FULLER, *Clerk.*

668 *Declination of J. M. Chilton to Join an Appeal.*

Notice of appeal.

To J. M. Chilton, Esq., attorney and solicitor, Montgomery, Ala.

DEAR SIR: Take notice that on the 21st day of March, 1903, before one of the judges of the circuit court of the United States for the northern district of Georgia, at Atlanta, Ga., The Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company parties with you defendant, in the equity cause of Riverdale Cotton Mills *vs.* The Alabama & Georgia Manufacturing Company, *et al.*, lately pending in the circuit court of the United States for the northern district of Georgia, will enter and ask the allowance of an appeal to the circuit court of appeals of the United States for the fifth circuit from the final decree rendered on the 29th day of September, 1902, by the circuit court of the United States for the northern district of Georgia.

You are requested to join in said appeal.

MARION ERWIN,
Solicitor for Alabama & Georgia Mfg. Co. and Huguley Mfg. Co.

Service of above notice acknowledged, and the undersigned having no interest in the matter other than that of a solicitor as appears of record in said cause, declines to join in said appeal.

Dated at Montgomery, Ala., this 19th day of March, 1903.

J. M. CHILTON.

Filed in clerk's office, 21st day of March, 1903.
O. C. FULLER, *Clerk.*

669 *Assignment of Errors.*

In the Circuit Court of the United States for the Northern District of Georgia.

RIVERDALE COTTON MILLS, Complainant,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY *et al.*, Defendants. } In Equity.

Ancillary bill for injunction.

And now comes the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, both corporations created

and organized under the laws of the State of Alabama, who appeal from the decree rendered in said cause by said circuit court for the northern district of Georgia on the 28th day of September, 1902, and with their appeal file the following assignments of error, jointly and severally:

First. That the said circuit court erred in not dismissing said alleged ancillary bill for want of jurisdiction of the subject matter and of the parties.

Second. That the said circuit court erred in not dismissing said alleged ancillary bill, because it appears upon the face of said bill that it does not embrace a controversy wholly between citizens of different States, and that it is not an ancillary or dependent bill of which the court would have jurisdiction irrespective of the citizenship of the parties.

Third. That the said circuit court erred in not dismissing said alleged ancillary bill, because said bill is not ancillary to the original bill of Robinson, trustee, to which it was by said decree complained of, declared to be ancillary but was in fact an original bill brought by an alleged purchaser of title to lands situate in the State of Alabama, and in the right only of such a purchaser under decree in said bill of Robinson, trustee, for the purpose of protecting the alleged title so acquired, and the said cause not presenting a controversy between citizens of different States the said circuit court was without jurisdiction to render the decree complained of.

Fourth. That the said circuit court erred in not dismissing said alleged ancillary bill, because Robinson, trustee, being at the
670 time of the filing of his suit a citizen of Alabama elected to make the Alabama & Georgia Manufacturing Company, the Georgia corporation, party defendant, and did not and could not make the Alabama & Georgia Manufacturing Company, the Alabama corporation, a party defendant, as it would have ousted the court of jurisdiction, and no decree in said Georgia suid against the said Georgia corporation could give the said Robinson, trustee, or any person claiming under him, a right to enforce it against said Alabama corporation by ancillary proceedings, and the granting of relief which the court was without jurisdiction to grant on said original proceedings.

Fifth. That the said circuit court erred in not dismissing said alleged ancillary bill, because the same was a suit by which through process of injunction served in Alabama, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, both corporations of Alabama, resident in the middle district of Alabama, and their solicitors of record in a suit pending in Alabama were brought before said circuit court, and although timely objection was made by said defendants to the jurisdiction of said circuit court over their persons in said suit, they were perpetually enjoined by said decree complained of. The said circuit court not having jurisdiction of the persons of the defendants for the purpose of rendering said decree perpetually enjoining them.

Sixth. That the said circuit court erred in rendering said dec complained of because the said alleged ancillary bill on which s decree was rendered, was a suit for injunction for the protection an alleged title to lands situate in Chambers county, Alabama, a against two Alabama corporations, and was a suit of a local nat maintainable only in a State court of Alabama, or in the circ court of the United States for the middle district of Alabama.

Seventh. That said circuit court erred in rendering decree co plained of because it enjoined and stayed proceedings in a court the State of Alabama in contravention of the provisions of secti 720 of the Revised Statutes.

Eighth. That the court erred in rendering the decree complain of because there was no evidence or proof to support the rel granted, in this, that said decree was rendered upon said alleg ancillary bill, and the answer of respondents thereto, and with evidence taken or heard in support of the allegations of sa
671 bill, save and except the record of the proceedings on t original bill of Robinson, trustee, which did not extend to establish the new matters set up and averred in said alleged ancilla bill, and which were not admitted in the answer of respondents, a which were put in issue by the answer of respondents, to-wit: t allegations of said alleged ancillary bill, (1) as to the identity in fa and in law of the Alabama corporations, complainants, in the Al bama suit, with the defendant, Georgia corporations of the sam name in Georgia; (2) as to the situation of said lands the subject matt of said Alabama suit being in Georgia instead of Alabama; (3) as there never having been any organization of the Alabama & Georg Manufacturing Company of Alabama under its charter grante under the laws of Alabama; (4) as to said Alabama corporatio never having had a place of business in Alabama; (5) as to the fa that it was the Georgia corporation (chartered afterwards) and n the Alabama corporation of the same name which was seized of an held title to the lands in Alabama; (6) as to the binding forc against the Alabama corporation of the order of sale, sale and co firmation, all made after the charter of the Georgia corporation ha expired as averred in respondents' answer, and made in proceeding against the Georgia corporation and not against the Alabama co poration; (7) as to the Riverdale cotton mills, being a citizen Georgia and not a corporation created under the laws of Alabam as averred in the answer. Affirmative proof of said facts in issu being essential for the relief granted by said decree complained of.

Ninth. That the court erred in granting said decree complaine of, because the pleadings and proof on which it was rendered did no make a case for the equitable relief granted.

Tenth. That if the decree of the said circuit court made Marc 30th, 1895, fixing the amount of the mortgage debt and declaring i foreclosed, rendered against the Alabama & Georgia Manufacturin Company, the Georgia corporation, before its charter expired, ca be held to operate by way of estoppel on the corporation of Alabam

of the same name, the charter of the Georgia corporation having expired by limitation on February 7th, 1896, before order of sale and before sale, and prior to the right of redemption being barred, the remedy of said alleged purchaser was to set up subrogation to the rights of the mortgagees and to bring suit in the appropriate court in Alabama on the said decree of March 30th, 1895, and against the Alabama corporations for such relief as they are entitled to
672 thereon, and in due course to compel a conveyance to it of the property, and there was no equity shown by the pleadings and proofs to authorize the relief granted under the said alleged ancillary bill.

Eleventh. That the court erred in not holding that the deed from the commissioner appointed by the circuit court of the northern district of Georgia made under the decree of that court was ineffective to convey to the Riverdale cotton mills the title to the said property situate in Alabama, upon which alleged title the relief granted in said decree complained of was granted.

Twelfth. That as to the Huguley Manufacturing Company, the claimant of the equity of redemption of said lands and premises situate in Alabama, no decree having been rendered against it in said suit of Robinson, trustee, and it never having been given its day in court for the redemption of said property as such owner of the equity of redemption as required by law, it was error in the said circuit court to perpetually enjoin it from maintaining its said suit for redemption.

Thirteenth. Said suit of the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, corporations of Alabama, pending in the State court of Alabama, being a suit for the purpose not only of redemption of said mortgage property but also for an accounting for rents and profits from other persons, to-wit: the Galeton Cotton Mills and West Point Manufacturing Company, who are charged with receiving the rents and profits from September 6th, 1892, to November 1st, 1898, prior to the creation of the Riverdale Cotton Mills and prior to the conveyance set up by the Riverdale Cotton Mills by the commissioner of the said circuit court under decree of October 15th, 1898, it was error in said circuit court, at the suit of said Riverdale Cotton Mills brought in its own behalf and in its right as such purchaser alone, to perpetually enjoin said complainants in said Alabama suit from the prosecution of said suit for accounting from said other defendants to said Alabama suit who are not complainants in said alleged ancillary bill.

Fourteenth. That the said circuit court erred in not dismissing said alleged ancillary bill, it having been made to appear from the pleadings and proofs that said State court of Alabama, had first acquired jurisdiction of the *res*, and suit for accounting, it be-
673 ing the right of said Riverdale Cotton Mills, to file in that court a certified copy of the proceedings had in the case of Robinson, trustee, and have full faith and credit given to said proceedings as far as in law and equity they should receive.

Fifteenth. The said circuit court erred in not holding, that it never acquired in said suit of Robinson, trustee, jurisdiction of the *res*, so far as the property in Alabama is concerned, and that having failed to decree a conveyance and cause a conveyance to be made of said property from the defendants in that suit, to the purchaser at the commissioner's sale, that it was too late by ancillary bill commenced two years after final decree of confirmation, and five years after the expiration of the charter of The Alabama & Georgia Manufacturing Company, party defendant to that suit, to cure said defects in title by perpetual injunction against the Alabama corporations having the title thereto, and for that reason it erred in granting said decree.

Wherefore the said appellants pray that the decree of said circuit court of the United States for the northern district of Georgia, rendered in said cause on the 29th day of September, 1902, be reversed and that said alleged ancillary bill of the said Riverdale Cotton Mills be dismissed.

MARION ERWIN,
Solicitor for Appellants, The Alabama & Georgia Mfg. Co. and Huguley Mfg. Co.

Filed in clerk's office March 21, 1903.

O. C. FULLER, *Clerk.*

Appeal Bond.

Know all men by these presents, that we, The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, each a corporation organized under the laws of Alabama, as principal, and Claude N. Bennett, as sure*ties*, are held and firmly bound unto The River*side* Cotton Mills, a corporation organized under the laws of Georgia, in the full and just sum of seven hundred and fifty dollars, to be paid to the said The Riverdale Cotton Mills, it certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these
674 presents. Sealed with our seals and dated this ninth day of March, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a March term, 1902, of the circuit court of the United States for northern district of Georgia, to-wit: on Sept. 29, 1902, in a suit depending in said court, between The Riverdale Cotton Mills, a corporation under the laws of Georgia, as complainant, and The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, corporations under the laws of Alabama, and J. M. Chilton and Welles, Bennett & Welles, attorneys and solicitors, as defendants, a decree of injunction was rendered against the said The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, corpora-

tions under laws of Alabama, and the said J. M. Chilton and Welles, Bennett & Welles, attorneys and solicitors, and the said The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, corporations under the laws of Alabama, now intending to enter an appeal from said decree to the circuit court of appeals for the fifth circuit and to apply for a citation directed to the said The Riverdale Cotton Mills, a corporation under the laws of Georgia, duly signed by the judge of said court, citing and admonishing it to be and appear before the United States circuit court of appeals for the fifth circuit to be holden at New Orleans, Louisiana, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, corporations organized under the laws of Alabama, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE HUGULEY MANUFACTURING COMPANY, *Of Chambers County, Alabama,*
By WM. T. HUGULEY, *Agt. and Att'y.* [SEAL.]
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY,
Of Chambers County, Alabama,
By WILLIAM H. HUGULEY, *President.* [SEAL.]
CLAUDE N. BENNETT. [SEAL.]

Sealed and delivered in presence of:

H. T. GRAVES,
[SEAL.] *Notary Public.*
AMOS HUGULEY,
[SEAL.] *Notary Public.*

Approved by:
WM. T. NEWMAN,
U. S. Judge.

675 DISTRICT OF COLUMBIA, }
City of Washington. }

In person appeared before me Claude N. Bennett, surety on the foregoing bond, who being duly sworn, deposes and says that he is worth the sum of seven hundred and fifty dollars ($750.00) in his own right, over and above his just debts and liabilities, and exemptions under the homestead and exemption laws of Georgia; that his property consists of real estate which he owns in his own right, free from incumbrance, of the value of three thousand dollars, in the county of Fulton, Georgia, and for the purpose of meeting any liability which may be adjudged against him as surety on foregoing

bond, he hereby waives for himself and family all homestead and exemption rights under the constitution and laws of the State of Georgia, to the property above described, and all his other property.

CLAUDE N. BENNETT.

Sworn to and subscribed before me, this 9th day of March, 1903.

[SEAL.] H. T. GRAVES,
Notary Public.

Filed in clerk's office, 21st day of M'ch, 1903.

O. C. FULLER, *Clerk.*

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Riverdale Cotton Mills:

You are hereby cited and admonished to be and appear at the circuit court of appeals for the fifth circuit of the United States, to be holden at New Orleans, Louisiana, on the 18th day of April, 1903, pursuant to an appeal entered, allowed and filed in the circuit court of the United States for the northern district of Georgia, wherein The Alabama & Georgia Manufacturing Company, and The Huguley Manufacturing Company are appellants and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated this 21 day of March, 1903.

WM. T. NEWMAN,
U. S. Judge.

SOUTHERN DISTRICT OF GEORGIA, *ss:*

Before the undersigned personally comes Marion Erwin, of
676 Macon, Georgia, who being duly sworn, deposes and says that he personally served the within citation upon the Riverdale Cotton Mills by exhibiting the original to Benjamin F. Abbott, personally in the city of Atlanta, Fulton county, Georgia, on the 21st day of March, 1903, and at the same time delivering to said Benjamin F. Abbott, personally, a copy of the same, said Abbott being solicitor of record for said appellee.

MARION ERWIN.

Sworn to and subscribed before me this 25th day of March, 1903.

WM. E. MARTIN, JR.,
United States Commissioner for Southern District of Georgia.

Filed in clerk's office 26 day of March, 1903.

O. C. FULLER, *Clerk.*

(*Clerk's Certificate.*)

UNITED STATES OF AMERICA, *Northern District of Georgia,* } ss:

I, O. C. Fuller, clerk of the United States circuit court in and for the northern district of Georgia, do hereby certify that the foregoing and attached printing and writing, to-wit: Part I, page 1 to page 192, inclusive; part II, page 1 to page 300, inclusive; part III, page 2 to page 97, inclusive; is a true, full, correct and complete transcript of the record in said court in the equity cause of J. J. Robinson, trustee, *vs.* Alabama & Georgia Manufacturing Company, *et al.*, referred to in the decree rendered in said court on the 29th day of September, 1902, in the cause of The Riverdale Cotton Mills *vs.* Alabama & Georgia Manufacturing Company, in this certificate mentioned.

And I further certify that the foregoing and attached printing and writing hereto attached marked part IV and included between pages numbered 1 and 118, inclusive, is a true, full, correct and complete transcript of the record of the proceedings had on said bill of The Riverdale Cotton Mills *vs.* Alabama & Georgia Manufacturing Company, *et al.*, as the same remains of file and of record in my office in the matter of The Riverdale Cotton Mills against Alabama & Georgia Manufacturing Company, *et al.*

In testimony whereof, I hereunto set my hand and seal of the said circuit court, at Atlanta, Georgia, this 28th day of March, A. D. 1903.

[SEAL.] O. C. FULLER, *Clerk.*

677 United States Circuit Court of Appeals, Fifth Circuit, October Term, 1903.

OCT. 14, 1903.

(Extract from Minutes.)

ALABAMA & GEORGIA MANUFACTURING CO. ET AL. *versus* RIVERDALE COTTON MILLS. } No. 1258.

On this day this cause was regularly called, and after argument by Marion Erwin, Esq., for appellants, and Thos. H. Watts Esq., for appellee, was continued for further hearing.

October Term, 1903.

Oct. 15, 1903.

(Extract from Minutes.)

ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.
vs.
RIVERDALE COTTON MILLS. } No. 1258.

On this day this cause was called for further hearing, and after argument by Thos. H. Watts, Esq., for appellee and Marion Erwin, Esq., for appellants, was submitted to the court upon record and briefs.

November Term, 1903.

Jan. 12, 1904.

(Extract from Minutes.)

ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.
vs.
RIVERDALE COTTON MILLS. } No. 1258.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

678 On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby reversed, and this cause remanded to said circuit court, with directions to dismiss the appellee's bill, without prejudice to the right of the appellee to defend the suit against it in the State court, or to otherwise maintain, in any court of competent jurisdiction, any rights which it may have against the appellants.

It is further ordered, adjudged and decreed that the appellee, Riverdale Cotton Mills, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

Jan. 12, 1904.

Pardee, circuit judge, dissenting.

Filed 12th day of Jan'y, 1904.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

In the United States Circuit Court of Appeals, Fifth Circuit, at Montgomery, —— Term, 1903.

ALABAMA AND GEORGIA MANUFACTURING COMPANY *et al.*, Appellants,
vs.
RIVERDALE COTTON MILLS, Appellee.
} No. 1258.

Appeal from the circuit court of the United States for the northern district of Georgia.

Present: Pardee, McCormick and Shelby, circuit judges.

In our opinion the circuit court erred in taking jurisdiction of appellee's bill.

On February 7th, 1866, the State of Alabama passed an act to incorporate the Alabama and Georgia Manufacturing Company, the provisions of which are as follows:

679 "SECTION 1. Be it enacted by the senate and house of representatives of the State of Alabama in General Assembly convened, That James Metcalf, George Huguley, Benjamin H. Hill, William P. Chilton and George W. Huguley, together with such other persons as hereafter may be associated with them, and their successors, be and they are hereby made and constituted a body corporate in fact and in name, under the name, style and title of 'The Alabama and Georgia Manufacturing Company,' and by that name shall be, and are hereby made able and capable at law, to have, hold, receive and purchase, possess and enjoy to them and their successors all real and personal estate, of whatever kind or amount said corporation may deem necessary to carry all the objects of said corporation into full force and effect, and may sell, grant, convey or otherwise dispose of the same, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts having competent jurisdiction; to make, use and have a common seal, and the same to alter, break and review at pleasure, and to do all the acts incident to a body corporate and politic.

"SECTION 2. Be it further enacted, That the objects of said corporation shall be the manufacture of wool and cotton into thread and cloth, the manufacture of meal, flour, lumber, shingles, boards and machinery of any description, or such branches or parts thereof as they see proper to engage in. The place of business shall be on the Chattahoochee river, in the neighborhood of Campbell's mills, in the county of Chambers, and in the State of Alabama; and to enable the said persons named in the first section of this charter to carry out the purposes of this charter, they and their successors and associates may control and use the water of the Chattahoochee river, so far as the riparian rights of this State are concerned, by locks

dams, canals or otherwise, for manufacturing purposes generally; and to secure their property against loss by fire or other injuries may prevent persons from building fires or camping within two hundred yards of the factory buildings.

"SECTION 3. Be it further enacted, That said body corporate shall have power to prescribe the number of shares into which the capital stock of said corporation shall be divided, the mode in which it shall be taken, paid, transferred or assigned, and also to prescribe votes to which each share shall be entitled; that the rules adopted shall be uniform, equally securing the rights of each stockholder; and also to provide for the election of such officers as may be deemed necessary for the government and management of the affairs of the corporation, to ordain, establish, and put in execution such
680 by-laws, ordinances and resolutions as they shall deem necessary and expedient for the government of said corporation, not inconsistent with the constitution and laws of the State of Alabama, or of the United States; and in general to do and execute all and singular the acts, matters and things which may be necessary for manufacturing.

"SECTION 4. Be it further enacted, That said corporation shall not exercise banking privileges, but is authorized to carry the foregoing granted powers into execution, according to the true intent and meaning thereof.

"SECTION 5. Be it further enacted, That said corporation shall have the power to borrow money and to loan out its surplus earnings on similar security or mortgage, and to ordain such rules and regulations in respect to stockholders who refuse to pay up any balance on their stock, and to compel him to pay upon penalty of forfeiture to said corporation; provided no stockholders shall be liable beyond the amount of his, her, or their stock."

On March 21st, 1866, the State of Georgia enacted as follows:

"An act to incorporate the Alabama and Georgia Manufacturing Company.

"SECTION I. Be it enacted, by the senate and house of representatives of the State of Georgia, in General Assembly met, That James Metcalf, George Huguley, Benjamin H. Hill, William P. Chilton, and Geo. W. Huguley, together with such other persons as may hereafter be associated with them and their successors, be, and they are hereby made and constituted a body corporate in fact and in name, under the name, style and title of the Alabama and Georgia Manufacturing Company, and by that name shall be, and they are hereby made, able and capable at law, to have, hold, receive, purchase, possess and enjoy, to them and their successors, all real and personal estate of whatever kind or amount said corporation may deem necessary to carry all the objects of said corporation into full force and effect, and may sell, grant, convey, or otherwise dis-

pose of the same, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts having competent jurisdiction; to make, use and have a common seal, and the same to alter, break and renew at pleasure, and to do all other acts incident to a body corporate and politic.

"SECTION II. That the objects of said corporation shall be
681 the manufacture of wool and cotton into thread and cloth, the manufacture of meal, flour, lumber, shingles, boards, and machinery of any description, or such branches or parts thereof as they see proper to engage in. And to enable the said persons named in the first section of this charter to carry out the purposes of this charter, they and their successors, and associates, may control and use the water of the Chattahoochee river, so far as the riparian rights of this State are concerned, by locks, dams, canals, or otherwise, for manufacturing purposes generally; provided, that nothing in this act shall be so construed as to give said corporators, or their successors, the privileges to interfere with, or disturb the vested rights of any person or persons whomsoever, either on the east or west bank, or islands in the Chattahoochee river, and that said dams, locks, and canals shall not extend more than half way across said river, from the west side, and to secure their property against loss by fire, or other injuries, may prevent persons from building fires, or camping, within two hundred yards of the factory buildings.

"SECTION III. That said body corporate shall have power to prescribe the number of shares into which the capital stock of said corporation shall be divided, the mode in which it shall be taken, paid, transferred, or assigned, and also to provide the mode by which stockholders may vote, and the number of votes to which each share shall be entitled; that the rules adopted shall be uniform, equally securing the rights of each stockholder, and also to provide for the election of such officers as may be deemed necessary for the government and management of the affairs of the corporation; to ordain, establish, and put into execution, such by-laws, ordinances, and resolutions, as they shall deem necessary and expedient for the government of said corporation, not inconsistent with the constitution and laws of the State of Georgia, or of the United States, and in general to do and execute, all and singular, the acts, matters and things, which may be deemed necessary for manufacturing.

"SECTION IV. That said corporation shall not exercise banking privileges, but is authorized to carry the foregoing granted powers into execution, according to the true intent and meaning thereof.

"SECTION V. That said corporation shall have the power to borrow money on mortgage, or other security, and to loan out its surplus earnings on similar securities, or mortgage, and to ordain such rules and regulations with respect to stockholders who refuse to pay
up any balances on their stock, as well as compel them to
682 pay upon penalty of forfeiture such stock to said corporation; provided no stockholder shall be liable beyond the value of his, her, or their stock.

"SECTION VI. That said corporation shall have the right and privilege to build, erect, make and preserve all dams, locks, canals, abutments, or other needful structures half way across said Chattahoochee river, as may be necessary to give them the greatest amount of water power, and to use for that purpose the islands contiguous to their lands for abutments and dams, and to erect all needful buildings on the east side of the river, and to carry on any of the business and manufactures, or any branch, or branches, of the same, in this State, that said charter authorizes them to engage in, or carry on in the State of Alabama, and generally to do all acts coming within the legitimate scope of their business and objects aforesaid, which usually belong to bodies corporate and politic.

"SECTION VII. That the private property of the stockholders shall be liable for the debts of said corporation, to the amount of their subscribed stock not paid in at the time any suit may be commenced.

"SECTION VIII. That the capital stock of said company shall be fifty thousand dollars, with permission to increase the same to one million dollars, which stock shall be divided into shares of one hundred dollars each.

"SECTION IX. That nothing in this act shall be so construed as to prevent the legislature from taxing the property of said company as other property in this State.

"SECTION X. That said corporation shall not organize or commence business until the capital stock shall have been subscribed and ten per cent. of the same paid in.

"SECTION XI. That the place of business of said corporation shall be Columbus, Georgia, or Lagrange, Georgia."

On the second day of January, 1884, the Alabama and Georgia Manufacturing Company, as party of the first part, "at its office in the city of West Point," executed a certain instrument of mortgage, conveying to trustees therein named lands therein specifically described, including a forty-foot right-of-way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the said party of the first part. This instrument recites, that "at a meeting of the board of directors of the Alabama and Georgia Manufacturing Company, held at the office of said company, in the
683 city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present, the following resolutions was adopted, &c.," the substance of the resolutions being to authorize the issuance of bonds and the execution of a mortgage to secure the same.

On January 20th, 1891, J. J. Robinson, one of the trustees named in the mortgage, verified his bill addressed to the judge of the

circuit court of the United States for the northern district of Georgia, seeking, on grounds therein stated, a foreclosure of the mortgage, and presented the same to one of the judges of that court, who, on the next day, passed an order, "that defendants show cause — on Saturday, the 31st of January, 1891, why an injunction should not issue and a receiver be appointed as prayed for in the bill." The first paragraph of the bill says, "that J. J. Robinson, as trustee, for the purposes hereinafter stated, who avers himself to be a citizen of and resident in the State of Alabama, brings this his bill against the Alabama and Georgia Manufacturing Company, a corporation created under and by virtue of the laws of the State of Georgia and a resident and citizen of said northern district of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia, and a resident and citizen of said State of Georgia and of the northern district of such State; and against W. T. Huguley, who your orator avers to be a citizen of said State of Georgia and residing in said northern district of Georgia."

In another paragraph it is alleged, "that under and by virtue of a decree in chancery, issuing out of the superior court of Troup county, Georgia, at —— term, 1898, all of the property of the said Alabama and Georgia Manufacturing Company covered by said deed of trust was sold by the sheriff of Harris county, Georgia, on the first Tuesday in January, 1890, and purchased by certain persons who afterwards, as orator is informed, conveyed or otherwise disposed of the same to said Huguley Manufacturing Company, defendants herein, and said last named corporation is now in possession of the same, claiming said property under said sale."

The second clause of the prayer is, that orator may have a decree in his favor against the Alabama and Georgia Manufacturing Company; that it shall pay the sums found to be due orator as trustee for bondholders, &c., by a short day to be named by the court, and that in default the company and any and all persons claiming under it be absolutely debarred and forever foreclosed of and from all equity of redemption in and to said mortgaged premises and every part thereof. The mortgage is attached as an exhibit
681 to the bill. The record shows the following agreement of counsel: "The plaintiff in the foregoing bill hereby agrees that he will not for the present press the application for injunction and receiver, without giving at least thirty days' notice to N. J. & T. A. Hammond, solicitors for defendants. And the defendants reserve the right to call up the said application for receiver, etc., on giving like notice to Dorsey, Brewster & Howell or Abbott & Smith, solicitors for the plaintiff. This 31st day of January, 1891." It shows also this acknowledgment of service: "I acknowledge due and legal service of the within bill, waiving copy, process and copy of process, this 29th day of January, 1891. Signed: 'W. T. Huguley, Alabama & Georgia Manufacturing Co., per N. J. & T. A. Hammonds, its solicitors." On February 10th, 1892, solicitors for de-

fendants, The Huguley Manufacturing Company and The Alabama & Georgia Mfg. Co., in the bill of J. J. Robinson, trustee, against them and W. T. Huguley, entered their appearance. On February 13th, 1891, the defendant, The Alabama and Georgia Manufacturing Company, submitted demurrers to the bill, and on June 9th, 1891 filed an answer thereto, averring:

"1. The citizenship and residence of all the parties named in said bill are admitted as alleged." The answer proceeds at length but presents nothing further material to the view we have taken of the case which we are now considering. Under this bill of foreclosure against the defendants, as therein stated, such proceedings were had as eventually resulted in passing of decrees for the sale of the mortgaged premises, the sale thereof, the confirmation of the sale and the acquisition of the possession thereof by the appellee.

On the 2nd day of May, 1901, the appellants filed their bill in the proper State court of the State of Alabama, setting forth the charter of the Alabama and Georgia Manufacturing Company by the legislature of Alabama, under the act of February 7th, 1866, and averring that the complainant therein, The Alabama and Georgia Manufacturing Company (the appellant here) was seized and possessed of the property described in the mortgage to Robinson *et al.*, trustees. It avers the execution of the mortgage by it on January, 18th, 1884. It sets forth the proceedings had in the bill filed by Robinson, trustee, against the Alabama and Georgia Manufacturing Company of Georgia, and charges that the Alabama corporation was not made a party to the Robinson bill; and avers that all of the judicial proceedings in Georgia are absolutely null and void in so far as it concerns or affects the title of the complainants to the lands and
685 property in Alabama; and that the equity of redemption in the Alabama property has not been cut off as to them. For certain purposes set out in the bill, certain other corporations besides the appellee and certain individuals are made defendants therein. The prayer is, that the court adjudge and decree that complainants as mortgagors are entitled to redeem the mortgaged property and that the equity of redemption has never been cut off by any of the said judicial proceedings had in the Robinson suit; that a reference to a master be had to ascertain the amount of the debt and take account of the rents and profits earned, or that should have been earned, and of all waste, damages and conversions, etc., etc., and for such relief as the nature of the circumstances of the case may require.

To this bill, filed in the State court of Alabama, the appellee, joined by the other corporations made respondents therein, filed their joint and separate answer, demurrer, pleas and motion, the copy of which filed papers, as shown in the record, without the exhibits, covers ten and one-half closely printed octavo pages. In connection with which we note in the additional brief submitted for the appellee, this language: "It was absolutely necessary to file an answer in the Chambers County suit within thirty days after the filing

of said bill to prevent the rendition of a decree *pro confesso*." The exact date of the filing of this answer the record does not show. On June 10th the appellee obtained leave to file its bill in this case against the appellants, recounting the proceedings of the Robinson suit and praying for temporary and perpetual injunction against the defendants, restraining the prosecution of the Alabama suit or of any other similar suit.

On the same day the judge of the circuit court passed an order that the defendants named in the bill of complaint show cause on the 20th of June, 1901, why an injunction should not issue as prayed for. The record does not show that service was made on the Alabama and Georgia Manufacturing Company of Alabama, or on the Huguley Manufacturing Company of Alabama, but counsel of record for those companies in the Alabama suit, who were individually made parties defendant, acknowledged service for themselves individually, and the marshal returned that he had served subpœnaes on W. H. Huguley and W. T. Huguley at West Point, Georgia. On June 21st the defendants, The Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company, averring themselves to be corporations created and organized under the laws of Alabama and suing as such corporations of Alabama, and their solicitors, filed their answer to the rule to show cause and to the ancil-
686 lary bill. It submits to the court that the bill is not ancillary, and that on its face it shows that the court is without jurisdiction to entertain it. It presents in various forms its objections to the jurisdiction of the court, and prays that the bill be dismissed for want of jurisdiction of the persons and subject-matter of the proceeding. On October 8th the judge granted a preliminary injunction. The complainant filed no replication to the answer of the defendants, nor were exceptions filed to the sufficiency of the defendants' answer. A motion was made by the appellee to strike the answer, but no action of the court was had thereon. The defendants appear to have stood on their objection to the jurisdiction of the court, supported by exhibits to their answer and by the face of the record, including in the record the proceedings in the Robinson suit. The final decree from which this appeal is taken, passed September 29th, 1902, recites that "this cause coming on further to be heard, it is submitted upon the bill and proceedings in this cause, ancillary to the proceedings in the cause lately pending in this court, of J. J. Robinson as trustee, etc., *vs.* Alabama and Georgia Manufacturing Company, *et al.*, and upon the record in said last named cause." The decree grants all of the relief prayed for in the bill. The substance of the errors assigned is that the circuit court was without jurisdiction to try the case. The theory of the appellee and of its counsel appears, from the averments of the bill and the briefs and oral arguments submitted on its behalf, to be that the Alabama and Georgia Manufacturing Company was one corporation; that it was created under and by virtue of the laws of the State of Georgia; that it was the only necessary mortgagor party defendant to the

suit by the trustee to foreclose the mortgage on the property, situated partly in Georgia and partly in Alabama, constituting the whole of the property owned by the corporation of that name, and fully covered by its deed of trust; that the Huguley Manufacturing Company was created under and by virtue of the laws of the State of Georgia and exists only as a corporation of that State, and that both of these corporations having been made parties defendant to the Robinson suit, wherein all the substantial issues raised and presented by the appellant's bill of complaint, filed in the State court were, or could have been, exhaustively investigated, adjudged and determined, are concluded by the decrees passed in that foreclosure proceeding. On the other hand, the contention of the appellant is that The Alabama and Georgia Manufacturing Company of Alabama and The Alabama and Georgia Manufacturing Company of Georgia are two different entities; that the latter only was made defendant in the Robin-
687 son suit and that the former cannot be bound by that suit to which it was not a party; that it was not called upon by the proceedings against the Georgia corporation to take notice thereof, any more than any other stranger to that proceeding would have been required to do. It abundantly appears on the face of the record in the Robinson suit and in this suit that, in order to carry out the purposes of the creation of the Alabama and Georgia Manufacturing Company, it was originally necessary, and has continued to be important, that the company should control and use the water of the Chattahoochee river and make the same available by locks, dams, canals, or otherwise for manufacturing purposes generally, requiring therefor the grant of the riparian rights of the State of Alabama and of the State of Georgia to the banks and shores and bottom of that river, at the point where their manufacturing plant is located; that it could not take possession of these nor continue to use them, without the express authority of each of those States. That authority could be conferred by the creation of separate corporations of the same name and composed of the same individuals as stockholders and officers; or it could be conferred by the creation of a corporation in only one of the States and the express statutory license in the other State authorizing the foreign corporation so created to exercise in the second State the same powers and rights which had been given it by the State of its creation. It is not claimed that the last course indicated was either taken or attempted to confer on the Alabama and Georgia Manufacturing Company the power and authority to do business in each of these States in the institution and operation of its manufacturing enterprises. It is substantially and sufficiently shown that the first course suggested was adopted, and that the two companies, acting in harmony, conducted their manufacturing enterprises, and by the corporate name of the Alabama and Georgia Manufacturing Company, which was the name of each, executed the mortgage which was the basis of the Robinson foreclosure proceedings.

How far the unity of action in the prosecution of their enterprises by the two corporations may give such force to the decrees passed against one of them as may bind the other corporation in the matters affected by those decrees, is a question which goes to the merits of the controversy and is entirely beyond our inquiry into the jurisdiction of the circuit court to entertain this bill. Commencing, perhaps, with the case of The Bank of the United States *vs.* Devereaux, 5 Cranch, 61–88, and continuing to the present, the character of duly created corporate bodies as parties to litigation had in
688 the courts of the United States has been much discussed. In latter years the cases have chiefly arisen in connection with railroad corporations, but the doctrines announced apply to other corporations as well, and especially when, as the appellee alleges is the case here, the property and business of the corporation is held and conducted as an indivisible whole located in two States and the operation of it requires authority under the legislation of the respective States. A considerable number of cases are fully reviewed by the Supreme Court in its opinion in St. Louis and San Francisco Railway *vs.* James, 161 U. S., 545. The statement of the result of that review is applicable to the case before us. It is as follows: "There is an indisputable legal presumption that a State corporation, when sued or suing in a circuit court of the United States, is composed of citizens of the State which created it, and hence such a corporation is itself deemed to come within that provision of the Constitution of the United States which confers jurisdiction upon Federal courts in 'controversies between citizens of different States.'

"It is competent for a railroad corporation, organized under the laws of one State, when authorized so to do by the consent of the State which created it, to accept authority from another State to extend its railroad into such State and to receive a grant of powers to own and control, by lease or purchase, railroads therein, and to subject itself to such rules and regulations as may be prescribed by the second State. Such legislation on the part of two or more States is not, in the absence of inhibitory legislation by Congress, regarded as within the constitutional prohibition of agreements or compacts between States.

"Such corporation may be treated by each of the States whose legislative grants they accept as domestic corporations.

"The presumption that a corporation is composed of the citizens of the State which created it accompanies such corporation when it does business in another State, and it may sue and be sued in the Federal courts in such other States as a citizen of the State of its original creation.

"We are now asked to extend the doctrine of indisputable citizenship, so that if a corporation of one State, indisputably taken, for the purposes of Federal jurisdiction, to be composed of citizens of such State, is authorized by the law of another State to do business therein, and to be endowed, for local purposes, with all the powers and privileges of a domestic corporation, such adopted corporation

shall be deemed to be composed of citizens of the second State, in such a sense as to confer jurisdiction on the Federal courts at the suit of a citizen of the State of its original creation.

689 "We are unwilling to sanction such an extension of a doctrine, which, as heretofore established, went to the very verge of judicial power."

If, as the above language of the Supreme Court seems to show, it was beyond the legislative power of the State of Alabama to so combine the corporation it created with a corporation of Georgia of the same name, composed of the same individual stockholders and operated by the same officers, that a suit in a Federal court in Georgia against the Georgia corporation by a citizen of Alabama should become a suit against the Alabama corporation and have binding force on it as a party thereto without ousting the jurisdiction of the court, it seems to us that, for a stronger reason, it must be beyond the power of the corporations themselves, by any system of conducting their business, to clothe themselves with such peculiar citizenship. To borrow the language of the Supreme Court, "we are unwilling to sanction such an extension of a doctrine which, as heretofore established, went to the very verge of judicial power."

As the appellants could not have been parties defendant to the Robinson bill without ousting the jurisdiction of the court, and that court could not pass a decree against their property rights in Alabama, and did not make any effectual decree conveying title out of them (if it could have done so), and they are not assignees or privy in estate to the defendants in that bill, and claim an independent source of title, the cases of French *vs.* Hay, 22 Wallace 250; Dietzsch *vs.* Huidekoper, 103 U. S. 494, and Root *vs.* Woolworth, 150 U. S. 401, on which appellee relies, do not apply here.

It follows that the decree of the circuit court should be reversed and the cause remanded to that court with direction to dismiss the appellee's bill, without prejudice to the right of the appellee to defend the suit against it in the State court, or to otherwise maintain, in any court of competent jurisdiction, any rights which it may have against the appellants.

And it is so ordered.

690 U. S. Circuit Court of Appeals.

Filed Jan. 12, 1904. Charles H. Lednum, Clerk.

ALABAMA & GEORGIA MANUFACTURING CO. ET AL., Appellants,
vs.
RIVERDALE COTTON MILLS, Appellee.

PARDEE, circuit judge, dissenting:

We have before us for all purposes the entire record in Robinson *vs.* The Alabama & Georgia Manufacturing Company and The Huguley Manufacturing Company *et al.*

The question is whether or no the bill brought by the Riverdale Cotton Mills, purchasers under decrees in Robinson *vs.* The Alabama & Georgia Manufacturing Company, *et al.*, is an ancillary and supplemental bill within the cognizance and jurisdiction of the circuit court.

I understand my brethren to hold it to be an original bill and because of the citizenship of parties, beyond the jurisdiction of the circuit court.

A comprehensive statement of the facts of the case will be found, as recited by the Chief Justice, in Huguley Manufacturing Company *vs.* Galeton Cotton Mills, 184 U. S. 290 *et seq.*, and in *In re* Huguley Manufacturing Company and Alabama & Georgia Manufacturing Company, *ib.* 297, *et seq.*

If more details and facts are required to properly understand the matter in hand, they will be found in the opinions of Mr. Justice Lamar and Judge Newman in Robinson *vs.* Alabama & Georgia Manufacturing Company, 48 F. 12; in the elaborate opinions of Judge McCormick in the same entitled case, 56 F. 690; 72 F. 708; in the opinion of Judge Newman in the same entitled case, 89 F. 218, and in the well-considered opinion of Judge Shelby in Huguley Manufacturing Company *vs.* Galeton Cotton Mills, 94 F. 269; all prepared when we thought we were dealing with substantial rights in a case where the jurisdiction is affirmatively shown by the pleadings and admissions of the parties.

In the record now before us it appears that the owners, promoters and stockholders of the Alabama & Georgia Manufacturing Company, located on the State line between Georgia and Alabama, saw fit to procure a like charter of incorporation in each State with the same corporators, the same stockholders to own and manage the same property. In fact, there was only one real body, although it was chartered in two different States; there was only one
691 property, although it was located in two different States; there was only one business, although it may have been carried on by a body incorporated in both States.

It is contended that because the Alabama & Georgia Manufacturing Company was incorporated in the State of Georgia and in the State of Alabama, there were two distinct and separate legal entities—twins in law and in fact. If this contention be sound, then the fact that these twins in law had the same corporators, the same stockholders, the same officers, the same property and the same business, requires their assimilation to the celebrated Siamese twins, so united that wherever one was the other was necessarily present; and requires the holding that whatever was the act of the one was necessarily the act of the other. And it also seems clear that if they were two separate legal entities that in regard to the one plant and the one property and the one business, each was the full agent of the other and each was bound by the other's transactions. Whenever a bale of cotton was bought for the cotton mills or a yard of cloth was sold from the same, whether transacted by the Ala-

bama & Georgia Manufacturing Company of Alabama or the Alabama & Georgia Manufacturing Company of Georgia, it was complete and binding on both; and also when the board of directors of both these corporations, acting for and in the name of the Alabama & Georgia Manufacturing Company (wherever incorporated), in 1883, granted the mortgage which was the subject of foreclosure in the main suit in this case, without specifying which particular corporation was acting, each corporation was privy thereto and the mortgage then executed was the mortgage of both "entities" and binding upon both "entities."

When thereafter in 1888 a bill was filed against said corporation (without naming the State granting the charter) in the superior court of Troup county, State of Georgia, wherein a receiver was appointed and contradictory proceedings had, and wherein, thereafter on a full hearing, a decree was rendered directing the sale of all the property of the Alabama & Georgia Manufacturing Company subject to the mortgage before referred to, and whereunder a sale of all the said property subject to the mortgage aforesaid was made to the Huguley Manufacturing Company, that proceeding was binding upon each and both of the said alleged "entities," and thereafter neither of them had any equity of redemption or other pecuniary interest in the mortgaged property.

In the original suit of foreclosure herein, the Alabama & Georgia Manufacturing Company was made a party, with the allegation
692 that it was a corporation created under and by virtue of the laws of the State of Georgia. Whether the complainants in that bill knew of the Alabama charter does not appear; but it does appear that counsel of the highest rank at the Georgia bar entered their appearance as solicitors for the Alabama & Georgia Manufacturing Company and thereafter in an answer duly filed, confessed as follows: "The citizenship and residence of all the parties named in said bill are admitted as alleged."

A further fact appears from the answer filed in that case, that the Alabama & Georgia Manufacturing Company had for many years ceased to do business; that all the business that formerly was owned and carried on by the Alabama & Georgia Manufacturing Company was owned and carried on by the Huguley Manufacturing Company. As to the Huguley Manufacturing Company, there is an averment in the original bill that said company is a corporation created under the laws of the State of Georgia, and that allegation is fully admitted in the first answer filed.

The record shows that a Huguley Manufacturing Company was incorporated under the laws of the State of Alabama, and it is now averred—and is probably true—that the said Huguley Manufacturing Company was never incorporated in Georgia. The case against it, if presented on the theory that it was incorporated in both States, is the same as that against the Alabama & Georgia Manufacturing Company—with this difference, that the Huguley Manufacturing Company and parties claiming thereunder are the real parties in

interest and have been the active, persistent defendants in this long-pending litigation; and the record shows that the said Huguley Manufacturing Company, without a whisper as to any double character, in various instances petitioned for relief, was granted an accounting for the time elapsing between the first and second decrees and actually drew therefrom the proceeds.

If, as the record now shows, that the Huguley Manufacturing Company was never incorporated in the State of Georgia, then it is no twin entity (even of the Siamese variety), and in this litigation it occupies the position of a party who has falsely admitted his citizenship for the purpose of conferring jurisdiction and thereafter losing his suit, has repudiated the same.

However this may be, and on the ground that both of these legal "entities" were chartered in both States, then it is clear to me that if the Alabama & Georgia Manufacturing Company chartered in Alabama, and the Huguley Manufacturing Company chartered in Alabama, are separate "entities" from the corporations of
693 the same name chartered in the State of Georgia, then they should be held to be joint tenants, privies in estate, and both fully bound by the proceedings had in the foreclosure suit. Under the circumstances, to hold otherwise and permit the re-litigation of all the issues in the case in another court and before another tribunal is to not only rob the parties who have litigated for these many years in the circuit court and appellate courts of all the fruits of the decrees rendered, but remit the purchasers of the mortgaged property who have relied upon solemn decrees of the circuit court wherein jurisdiction was apparent of record, to other and foreign tribunals to re-litigate the foreclosure of the mortgage granted by this alleged hybrid and probably be forced into another accounting with the Huguley Manufacturing Company of the business and transactions of a large cotton mill and plant for the last t[illegible] years.

I do not say this would be a travesty on the administration of justice, though it looks much like it, but I must say that through and by the result now reached in this court, we judges, to say nothing of the learned justices and judges of the supreme and circuit court, have spent considerable time and labor in wrestling with hypothetical questions in a moot case, when we really thought we were passing upon substantial issues and rights, and when honesty and fair dealing required the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company and their counsel—unless they also were tricked—to make full disclosure of their citizenship and status as litigants.

My conclusions in this case can be shortly stated as follows: The Alabama & Georgia Manufacturing Company, wherever and how often incorporated, has no interest in this litigation, and is not a necessary or indispensable party, because long before the original bill was filed it had parted with its equity of redemption, and it had gone out of business and was practically defunct. If, however, it is

to be treated as a party having any interest, then as it was chartered in both Alabama and Georgia, the two legal "entities" resulting were joint tenants and privies in the mill property; and, in all the litigation carried on in the main case, wherein the Georgia corporation appeared and litigated, the Alabama corporation was a privy and a- fully bound as privies can be bound in any decree.

The Huguley Manufacturing Company was, in fact, only chartered in Alabama, and on its appearance and its pleadings and admissions in the answer to the first bill, it is fully and conclusively bound by the decrees rendered until they are judicially vacated and annulled.

The bill filed by the Riverdale Cotton Company is—if defi-
694 nitions are worth anything—an ancillary and supplemental bill, within the jurisdiction *ratione materia* of the circuit court on the facts stated therein, and within that court's jurisdiction *ratione personæ* through the prompt appearance of the defendants named therein.

I have not thought it necessary to support any legal proposition made herein with citations of adjudged cases, as those made seem too plain to require it, nor have I thought it necessary to review the cases cited in the opinion of the court, as I consider them all inapplicable to the real questions involved herein.

Questions of jurisdiction and of the corporate entities of parties when raised *in limine* should and do receive careful attention, but the principles therein involved are not at all applicable in determining who are the actual parties and privies bound in a concluded litigation where the court has been deceived by false allegations and fraudulent admissions into passing upon the merits involved.

There are some other questions raised in the assignments of error, the proper determination of which might require the reversal of the decree below, and a remand for further proceedings, but as my b-ethren insist on a dismissal of the bill for want of jurisdiction it is not necessary to consider them.

For the reasons here given and many others that could be given, I respectfully dissent from both the opinion and decree of the majority of the court.

695 In the United States Circuit Court of Appeals for the Fifth Circuit.

ALABAMA & GEORGIA MFG. CO. ET AL., Appellants,
versus
RIVERDALE COTTON MILLS, Appellee.
} No. 1258.

Appeal from the circuit court of the United States for the northern district of Georgia.

Application for a Rehearing.

U. S. circuit court of appeals. Filed Jan. 29, 1904.
CHARLES H. LEDNUM, *Clerk.*

695½ In the United States Circuit Court of Appeals for the Fifth Circuit.

ALABAMA & GEORGIA MFG. CO. ET AL., Appellants,
versus
RIVERDALE COTTON MILLS, Appellee.
} No. 1258.

Appeal from the circuit court of the United States for the northern district of Georgia.

Application for a Rehearing.

To the honorable the judges of the United States circuit court of appeals for the fifth circuit:

The appellee, Riverdale Cotton Mills, in the above stated cause, lately decided by your honorable court, respectfully asks for a rehearing in said cause, and in support thereof, sets forth the reasons therefor hereinafter stated and also prays a re-examination of the points and authorities contained in the two briefs filed in the name of appellee.

Subject to said application for a rehearing and in the event
696 the same should be denied by the court, appellee prays that, on account of the division of opinion as to the proper decision to be made in said cause, on account of the importance of the questions involved and on account of the protracted litigation as to the matters involved, this honorable court shall certify the said cause to the Supreme Court of the United States for its decision.

The rehearing, in our opinion, should be granted because, as we respectfully insist and will attempt to show, the decision is not in accordance with the facts proven and is, we respectfully insist, contrary to the settled law, for the following reasons:

1st. The facts, upon which the opinion of the majority of this honorable court is based, were not *proved*, but simply alleged in the answer.

2nd. The fact that there were two corporations of the same name, viz., Alabama & Georgia Manufacturing Company, was not proved, but simply alleged in the answer.

3rd. An allegation in an answer, entirely impertinent to the bill, (viz., the dual existence of said Alabama & Georgia Manufacturing Company), cannot be established as evidence, even though the plaintiff neglected to file a replication.

Gunnell *v.* Bird, 10 Wall. 304.

4th. New matter in an answer in response to anything in the bill must be sustained by proof to be of any avail as a defense.

Roach *v.* Summers, 20 Wall. 165.
McCoy *v.* Rhodes, 11 How. 131.
Seitz *v.* Mitchell, 94 U. S. 580.

5th. Where an answer admits a fact and insists upon a disputed fact by way of avoidance, the fact admitted is established, but the fact insisted upon (viz., the dual existence of the Alabama & Georgia Manufacturing Company) must be proved.

Cements *v.* Nicholson, 6 Wall. 299.
Carke *v.* White. 12 Pet. 178.
McCoy *v.* Rhodes, 11 How. 131.

697 The majority of this honorable court has based its decision upon the assumption that *the proof* in the case showed the existence of two corporations, called Alabama & Georgia Manufacturing Co., one chartered in Alabama and the other in Georgia. Such is the allegation of the answer, but we respectfully insist that said allegations are not supported by the *evidence*. The cause was "submitted upon the bill and proceedings in this cause, ancillary to the proceedings in the cause lately pending in this court of J. J. Robinson, as trustee, etc., against Alabama & Georgia Manufacturing Company, *et al.* and upon the record in said last named case."

It will thus be seen that the only *evidence* introduced was the record in the Robinson case, which did not show the dual existence of said corporations. If we are correct in this contention, there was no evidence, shown in the record, upon which to base the decision of the majority of this court. It is true that the ancillary bill did set out, as an exhibit, the bill and its exhibits, which had been filed in Chambers county, Alabama, but the ancillary bill alleges that the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company are corporations, organized under the laws of Georgia, and said bill refuses to admit the charter or organization of either of said corporations under the laws of Alabama. The ancillary bill further alleges that neither the Alabama & Georgia Manufacturing Company nor the Huguley Manufacturing Company

ever had an office in Alabama, but only in Georgia and that the whole property was operated as one business at an office at West Point, Georgia. (Record, p. 597–8.)

The ancillary bill treats the mortgagor, all the way through, as having been chartered under the laws of Georgia and shows that, in the Robinson suit, both the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company were charged, and admitted, to be Georgia corporations, (p. 599). The ancillary bill then contains no allegation that there were two corporations of the same name.

The answer of the ancillary bill alleges the existence of the
698 Alabama & Georgia Manufacturing Company, as chartered in two States, but no *proof* was presented in support of said answer. The record shows mere allegations, in avoidance of the allegations of the bill, without any proof to support the allegations of the answer. We have shown by the authorities above cited that the answer is not evidence of new matter alleged. Says the supreme court of Alabama, in McDonald *v.* Mobile Life Insurance Co., 56 Ala., on page 470—"Relief can only be granted on allegations and proof, and the latter will never be allowed to supply omissions or defects in the former (and *e converso*, we say). Allegations, *admitted or proved* are the only premises which will uphold a chancery decree."

See also Floyd *v.* Ritter, 56 Ala. 356.

"In equity a party cannot succeed upon a case proved, but not alleged, any more than upon a case alleged but not proved."

Foster *v.* Goddard, 1 Black, 506.

Grosholz *v.* Newman, 21 Wall. 481.

If this were not the rule, it would only be necessary to file a pleading and take judgment, for if allegations alone are necessary, this must follow.

Here every material allegation of the ancillary bill was proved by the record in the Robinson suit, and by the admissions of the answer. Not one single allegation of the answer, setting up new matter, is supported by any evidence. The allegations of the answer must then be disregarded.

Lehman *v.* McQueen, 65 Ala. 570.

An answer to a bill in equity, though sworn to, is worthless as *evidence*, in so far as it sets up independent matter, not responsive to the averments of the bill.

Barton *v.* Barton, 15 Ala. 400.

Gordon *v.* Bell, 50 Ala. 213.

699 6th. The burden of proving a disputed fact rests upon the party affirming its existence and claiming to derive right and benefit from it.

Lehman *v.* McQueen, 65 Ala. 570.

When the law casts the burden of proof upon a party, if he does not offer evidence of the fact, for all the purposes of the particular case, the non-existence of the fact must be assumed.

Lehman *v.* McQueen, 65 Ala. 570.

7th. The Alabama & Georgia Manufacturing Company, whether organized under the laws of Alabama or of Georgia, was not a necessary party to the original bill, filed in the Robinson suit, because, long before the filing of that bill, all of the interest of the Alabama & Georgia Manufacturing Company in the property in question had been divested by a sale of said property, under the order of a competent court.

Kerr *v.* Watts, 6 Wheat. 550.
Boon *v.* Chiles, 8 Pet. 532.
Wilkinson *v.* May, 69 Ala. 33.
Thomas *v.* Jones, 84 Ala. 302.

The Alabama & Georgia Manufacturing Company had at the time of the filing of the Robinson suit, no interest whatever in the mortgaged property, for the reason that its equity of redemption in said mortgaged property, had before that time been sold under the proceedings in Harris county, Georgia, and had been bought by the persons who afterwards organized the Huguley Manufacturing Company. It has been suggested that said sale did not bind the Alabama & Georgia Manufacturing Company, as an Alabama corporation, but it is abundantly shown by the record, as cited in our former briefs, that, upon the said sale by the Harris county court, the lands and property of the Alabama & Georgia Manufactur-
700 ing Company in Alabama as well as in Georgia, were at once delivered to the purchaser at that sale; that the purchaser went into possession of all of said property, in Alabama and Georgia, and that since that time, in 1889 or 1890, the Alabama & Georgia Manufacturing Company, either as an Alabama nor as a Georgia, corporation, has not had possession, and has not attempted to have possession or ownership of any of the said property, either in Alabama or in Georgia, that said corporation has long since been barred of any and all rights it ever had in or to any of the said property. It is immaterial whether the Harris county court had jurisdiction to sell the property of said corporation in Alabama. After an acquiescence in the said sale for nearly fifteen years, and acquiescence in being ousted of its possession for all that time, it has no right, title interest or claim in or to the said property or to any part thereof, for during all that time, up to the sale of the property in the Robinson suit, the Huguley Manufacturing Company had and claimed the undisputed ownership of the said property, subject to the said Robinson mortgage, openly, adversely and continuously, against said Alabama & Georgia Manufacturing Company and against all the world besides. There was absolutely no interest in the said property remaining in said Alabama & Georgia Manufacturing Com-

pany at the time the Robinson bill was filed, at the time the Chambers County bill was filed, or at the time the ancillary bill was filed, and therefore the said Alabama & Georgia Manufacturing Company, either as an Alabama or as a Georgia corporation, was not a necessary party to said bill, filed by Robinson, or to the ancillary bill filed in the same case.

Kerr *v.* Watts, 6 Wheat. 550.
Boon *v.* Chiles, 8 Pet. 532.
Wilkinson *v.* May, 69 Ala. 33.
Thomas *v.* Jones, 84 Ala. 302.

8th. The Alabama & Georgia Manufacturing Company, whether chartered in Alabama or in Georgia, is estopped from asserting any right against appellee in reference to the said property, because the money paid by appellee for the said property was applied to the extinguishment of debts due by said Alabama & Georgia Manufacturing Company under the said mortgage foreclosed in said Robinson suit.

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9th. The Huguley Manufacturing Company, whether chartered under the laws of Alabama or of Georgia, is estopped from insisting that the proceedings in the original suit were not binding on it, for the reason, that in the original suit, it claimed to be the owner of the equity of redemption in the property, the subject of the mortgage, (which fact was admitted to be true in said case by said Alabama & Georgia Manufacturing Company) and, in the said original suit, the said Huguley Manufacturing Company claimed, by petition, to be entitled to the rents of the mortgaged property for the time elapsing between the first and second sales and the said rents were awarded to the said Huguley Manufacturing Company.

10th. The Huguley Manufacturing Company, being estopped by its said action and by its other conduct in reference to the said property and being the admitted owner up to the time of the mortgage sale under which appellee bought, it can matter little whether said Alabama & Georgia Manufacturing Company of Alabama, was not a party to said Robinson suit, for the reason that said Alabama & Georgia Manufacturing Company had no interest in the said suit, no matter where incorporated.

11th. The mortgage foreclosed did not purport to be executed by the Alabama & Georgia Manufacturing Company of Alabama, nor by the Alabama & Georgia Manufacturing Company of Georgia, but simply by the Alabama & Georgia Manufacturing Company, a corporation. It was sued as a Georgia corporation and admitted itself to be such. The decree against it and the mortgage was foreclosed. If, as an Alabama corporation, it has any rights as to said property, different from those it had as a Georgia corporation, the United States court for the northern district of Georgia has ample jurisdiction in a proceeding ancillary to the original suit to protect said rights and the said court has also, we respectfully insist, the right and power to a proceeding ancillary to

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the original suit on the idea of doing complete justice, to prevent said Alabama & Georgia Manufacturing Company from asserting in another tribunal its alleged rights in the property, and said court has the right to determine the questions as to whether the two corporations are not in property and in name the same.

Ober *v.* Gallagher, 93 U. S. 199.
Sunflower Oil Co. *v.* Wilson, 142 U. S. 313.
Root *v.* Woolworth, 150 U. S. 401.
French *v.* Hay, 22 Wall, 250.

12th. It should always be the object and purpose of a court of equity to do justice and to uphold the right; to make the law a shield for the protection of parties in their rights, and not to allow it to be used as a sword in the hands of the vicious to work destruction. To permit the Alabama & Georgia Manufacturing Company of Alabama, at this late day in this prolonged litigation to reopen and relitigate all questions adjudicated in this matter, upon the plea that it has never had its day in court, we respectfully submit, is to enable said corporation to have an advantage which in justice and in good conscience, it is not entitled. Is it right that a person shall stand idle, when his alleged rights are being violated, say nothing until his property has been purchased in his presence by another, and then step forward to claim it? Is it right that a corporation, which is shown conclusively by the record to have no right, title, interest or claim in or to the property, should be permitted to annoy and harrass another in reference to said property by litigation in attempting to undo that which the said corporation knew at the time was being done, and to which it made no objection? Is there no such thing remaining in the law as the doctrine of estoppel? The Alabama & Georgia Manufacturing Company, whether chartered in Alabama or in Georgia, had the same officers and the same office. When one of the corpora-
703 tions met, the other necessarily met also, for each corporation had the same officers, stockholders and directors, if the Alabama & Georgia Manufacturing Company was ever organized as a corporation at all. If one of the corporations owned property, the other also owned the same property. If one of them made a mortgage, the other necessarily made it also. It is not shown that either corporation had any property which the other did not also own. When the Alabama & Georgia Manufacturing Company, as chartered under the laws of Georgia, was called into court in the Robinson suit, the same corporation, as chartered in Alabama was necessarily there also, although not named, and had the duty then and there thrust upon it of asserting its rights, if it had any.

13th. The bill in the Robinson suit, having alleged the citizenship of Robinson as being in Alabama and the other parties to the suit to be citizens of Georgia, the jurisdiction of the Federal court attached, and said jurisdiction remained, because this allegation as to the citizenship of the parties was not only not denied, but was ex-

pressly admitted to be true. That court, having acquired jurisdiction of the parties, had the authority to adjudicate their rights. Jurisdiction must be determined as from the commencement of the suit, even though the residence or citizenship of the parties may be afterwards changed.

Rouse *v.* Letcher, 156 U. S. 47.
Connolly *v.* Taylor, 2 Pet. 556.
Gregory *v.* Van Ee, 160 U. S. 64.

If, from inadvertence, or otherwise, some of the rights of the parties have been left unadjudicated, or in order to do complete justice, or to enforce its own decrees, a chancery court always has the power, in an ancillary proceeding, to complete its work and not remit said parties to any other tribunal to obtain their rights. Said court is bound to protect the purchaser under its decree in the possession of the property sold. This has been decided too often
704 to need authority to support. Are not these two corporations the same? Have they not the same blood, veins and sinew? Can one of them move without the other? Are they not as his honor, Justice Pardee says, like Siamese twins, and what one knows the other knows, what the one feels, the other feels, what binds the one binds the other?

14th. It is said that, had Robinson in his suit made the Alabama & Georgia Manufacturing Company, as an Alabama, as well as a Georgia corporation a party to his suit, the circuit court of the United States would have had no jurisdiction. This is true under the decisions. But that, we respectfully insist, is not the question presented here. Here, in the original suit, the court clearly had jurisdiction. The decree was rendered and the mortgage foreclosed in proper form. The purchaser was put into possession. After all this had been done, two of the parties to the original suit, in another tribunal, attempt to undo all that has been done, after each of them has received benefit in the former suit, on the plea that each of them has a dual existence, and that, although they have in one capacity had their day in court, the one having its debt paid and the other having received rents of the property, yet, they must have an opportunity in the other capacity to have another lengthened litigation as to the same matter. The court of conscience should not permit such trifling with justice.

Let us see to what a condition the decision drives us. Robinson could not have sued the Alabama and Georgia corporations, either in Alabama or Georgia, in the same suit. He must therefore have filed his suit in a State court in Alabama, which would have had no jurisdiction to order the sale of the mortgaged property in Georgia, or in a State court in Georgia, which would have had no jurisdiction to order the sale of the mortgaged lands in Alabama, or a separate suit in each jurisdiction and run the risk of having one or the other court hold that the first suit brought was a bar to the bring-

ing of the other. All that the law requires, we respectfully
705 submit, is that the party, whose interest is to be affected, should be before the court, whether in his true name or not, in other words, should have his day in court. That being accomplished as to the Alabama & Georgia Manufacturing Company as a Georgia corporation, it bound the same corporation under its Alabama charter, when it is shown that the two corporations are one and the same. Suppose a person whose name was John Henry William Smith, were sued simply as John Smith, and a decree rendered against him, would — be permitted to reopen the whole controversy upon the ground that John Henry William Smith had not, but only John Smith had been previously litigated with?

This proceeding was not an original, but an ancillary bill, and being such, the court had jurisdiction, regardless of the citizenship of the parties.

Rouse *v.* Letcher, 156 U. S., 47.
Gregory *v.* Van Ee, 160 U. S., 64.
Carey *v.* Houston, etc., 161 U. S., 115.
Pacific, etc., *v.* Missouri, etc., 111 U. S., 505.
Root *v.* Woolworth, 150 U. S., 401.
White *v.* Ewing, 159 U. S., 36.
New Orleans *v.* Fisher, 180 U. S., 185.

The failure to file a replication was an irregularity.
Washington, etc., *v.* Washington, etc., 10 Wall., 299.

The failure to file a replication can not be complained of for the first time in an appellate court.
Fritz *v.* Stover, 22 Wall., 769.

We earnestly pray for a re-hearing of this cause. If this honorable court should deny the re-hearing, then we hope the case may be certified for decision of the Supreme Court of the United States.

Respectfully submitted, THOS. H. WATTS,
Attorney for Riverdale Cotton Mills.

706 I hereby certify that the foregoing application for re-hearing is in my opinion based upon valid grounds and I further certify that, in my opinion, the decision of the majority of this honorable court in this cause is not in accordance with the law or with the facts as proven.

THOS. H. WATTS,
Attorney for Riverdale Cotton Mills.

707 November Term, 1903.

FEB. 9, 1904.

(Extract from Minutes.)

ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.
vs.
RIVERDALE COTTON MILLS. } No. 1258.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby, denied.

United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 708 pages, numbered from A to 707, inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court, in the case of Alabama & Georgia Manufacturing Company, *et al.*, *versus* Riverdale Cotton Mills, No. 1258, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 9th day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

708 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company are appellants and Riverdale Cotton Mills is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Georgia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United
709 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and pro-

ceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of March, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

710 UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

In obedience to the command of the within writ, and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, Charles H. Lednum, clerk of said court, as a return to and in compliance with said writ, do herewith transmit to the honorable the Supreme Court of the United States, a true, full and perfect transcript and copy of the record and all proceedings had in this court, wherein Alabama & Georgia Manufacturing Company, *et al.*, are appellants, and Riverdale Cotton Mills is appellee, numbered 1258, as fully and completely as the same now remains of record in my office.

Given under my hand and the seal of the said United States circuit court of appeals for the fifth circuit at the city of New Orleans, Louisiana, this the 9th day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] File No. 19,246. Supreme Court of the United States. No. 595, October term, 1903. Riverdale Cotton Mills *vs.* Alabama & Georgia Manufacturing Co., *et al.* Writ of certiorari.

Endorsed on cover: File No. 19,246. Supreme Court of the United States, October term, 1903. No. 194. Riverdale Cotton Mills, petitioner, *vs.* The Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. Writ of certiorari and return. Filed April 13th, 1904. (19,246.)

IN THE UNITED STATES SUPREME COURT.

RIVERDALE COTTON MILLS,
Petitioner.

v.

ALABAMA & GEORGIA MFG. CO., *et al.*
Respondents.

Petition for Certiorari.

To the Honorable, the Supreme Court of the United States.

Your petitioner, Riverdale Cotton Mills, a corporation by its attorney, Thomas H. Watts, respectfully files its petition, praying for a certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, to certify for review by this Honorable Court, the record and proceedings in said Circuit Court of Appeals, in a cause wherein the Alabama & Georgia Manufacturing Company, a corporation, and Huguley Manufacturing Company, a corporation, were appellants, and your petitioner was appellee, and in which cause the decree of the Circuit Court of the United States for the Northern District of Georgia was reversed and a decree rendered commanding said Circuit Court of the United States for the Northern District of Georgia to dismiss the bill in said cause, without prejudice to the right of petitioner to make defense in a certain cause pending be-

tween the same parties and others, in the Chancery Court of Chambers ounty, in the State of Alabama. A certified copy of the record and proceedings in said United States Circuit Court of Appeals is herewith filed and made a part of this petition; and petitioner respectfully represents:

First.—This cause involves a question of jurisdiction, and was decided in the Circuit Court of Appeals by a divided court, Justices Shelby and McCormack concurring, and Justice Pardee dissenting in the decision rendered. The question of jurisdiction arises in this way: There was a suit of which the Circuit Court of the United States for the Northern District of Georgia had jurisdiction, not only of the person, but of the subject matter, as the complainant, Robinson, as trustee, was alleged to be a citizen of Alabama, and the defendants, the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were alleged to be citizens of Georgia, and the said bill was for the purpose of foreclosing a mortgage upon property situated partly in Alabama and partly in Georgia, which was operated as one indivisible manufacturing plant. In said cause, the said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were alleged to be corporations, organized under the laws of the State of Georgia. They admitted themselves to be such, and litigated for ten years in said cause, and were finally defeated and the mortgaged property sold and passed into the possession of the purchaser, Riverdale Cotton Mills, under the said sale, which was confirmed by said Circuit Court. Some two years after said Riverdale Cotton Mills had been placed in possession of said property, said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, alleging themselves to be corporations organized under the laws of Alabama, filed a new bill in the Chancery Court of Chambers County, Alabama, to relitigate all the questions litigated and decided in said Robinson suit above referred to. Said Riverdale Cotton Mills, after the filing of said suit in Chambers County, Alabama, filed the

bill in this case, (pp. 597-606, Record), ancillary to the proceedings in said Robinson suit, praying the protection of said Circuit Court of the United States for the Northern District of Georgia, in the possession of the property purchased in said Robinson suit. Such proceedings were had in the suit filed by said Riverdale Cotton Mills as that the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were enjoined from interfering with said Riverdale Cotton Mills as to said property and from prosecuting said suit in Chambers County, Alabama. From said decree an appeal was taken from said Circuit Court of the United States for the Northern District of Georgia to said United States Circuit Court of Appeals for the Fifth Circuit, where the decree above mentioned was rendered by a divided court, as aforesaid.

Second.—The right of the Riverdale Cotton Mills, which is a corporation organized under the laws of Georgia, to maintain its said bill against the defendants, rests upon the following state of facts, shown by the record of the Circuit Court of Appeals in this cause herewith filed: In January, 1891, one Robinson, as trustee, alleging himself to be, and who was, a citizen of Alabama, filed his bill in the Circuit Court of the United States for the Northern District of Georgia, (p. 2, et seq., Record), to foreclose a mortgage executed by Alabama & Georgia Manufacturing Company on January 2, 1884, to secure certain bonds issued by it. This mortgage conveyed the indivisible property operated as one concern, situated partly in Alabama and partly in Georgia. To the said Robinson bill, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, both alleged to be corporations organized under the laws of Georgia, were made defendants. In the said Robinson bill, it was alleged that said Alabama & Georgia Manufacturing Company was insolvent and had ceased to do business; that under a decree rendered in a court of the State of Georgia, all of the property of said Alabama & Georgia Manufacturing Company had been sold in January, 1890, subject

to the mortgage above mentioned, to parties who conveyed the same to said Huguley Manufacturing Company, and that said Huguley Manufacturing Company had gone at once into, and were still in, the possession of all of said property covered by said mortgage. The Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company answered said bill of Robinson, as trustee, (p. 18, Record), admitting the citizenship, the sale of the property of the Alabama & Georgia Manufacturing Company, and the purchase and possession thereof by the Huguley Manufacturing Company subject to the said mortgage as alleged in said Robinson bill, and admitting that the said Alabama & Georgia Manufacturing Company had gone out of business; but said answer contested the right of the said trustee to have said mortgage foreclosed. The Huguley Manufacturing Company filed an amendment to its answer, p. 27, Record), alleging that it was the owner of the property mentioned in the Robinson mortgage subject to said mortgage. There was a decree in said Robinson suit, in May, 1892, foreclosing said mortgage and ordering all the property covered thereby in Georgia and Alabama sold to satisfy the said mortgage, and in the said decree, (p. 164, Record), the court found, among other things, the following: "In the year 1888, a bill in equity was filed in the State courts by other creditors and a receiver appoited for the factory property named, who, after holding same for a short time, sold said property by order of the court, the sale being made subject to the bonds and mortgage before alluded to. The purchasers at this sale afterwards organized themselves into what is known as the Huguley Manufactring Company." Under said decree of said Circuit Court of the United States for the Northern District of Georgia, said mortgaged property was sold and went into the possession of the purchaser, and said sale was confirmed, (p. 185, Record.) There was an appeal from said decree of sale, and said decree of sale was reversed in the Court of Appeals for the Fifth Circuit, May 30, 1893.

Third.—In May, 1895, there was a second decree of foreclosure and sale of said property, in which decree, (p. 563, Record), it was found by the court, among other things, "a mortgage under which the property was sold, was made by the Alabama & Georgia Manufacturing Company in January, 1884. Subsequently, by reason of some litigation in the Superior Court, the property of the Alabama & Georgia Manufacturing Company went into the hands of a receiver and was sold, and bought by persons who afterwards organized the Huguley Manufacturing Company, they buying at the receiver's sale, subject to the mortgage of Robinson, trustee." There was an appeal from said second decree to the Circuit Court of Appeals, where said decree was affirmed in January, 1896. After the second appeal, on the petition of Huguley Manufacturing Company, (p. 200, Record), a decree was rendered in the Circuit Court of the United States for the Northern District of Georgia, requiring Robinson, as trustee, to credit on the debt secured by the mortgage, the value of the use and occupation of the property between the times of the first and second sales. In March, 1896, the Circuit Court for the Northern District of Georgia passed an order requiring the second foreclosure sale, which had been decreed but stopped by the second appeal, to be proceeded with, and said property was sold under said last decree in September, 1898. At said sale, L. Lanier, acting for Riverdale Cotton Mills, the petitioner, became the purchaser of all of said property of the Alabama & Georgia Manufacturing Company in Georgia and Alabama, and the said sale was confirmed, and petitioner was put into possession of all of said property There was a third appeal to the Circuit Court of Appeals, where the decrees and orders of the Circuit Court were affirmed in May, 1899. From this last decree of affirmance in said Circuit Court of Appeals, an appeal was sued out to the Supreme Court of the United States, which last named court dismissed said appeal on the 24th day of February, 1902.

Fourth.—In June, 1901, said Alabama & Georgia Manufacturing Company, and Huguley Manufacturing Company, alleging themselves to be corporations organized under the laws of Alabama filed their bill, (pp. 610-624, Record), in the Chancery Court of Chambers County, Alabama, against said Robinson as trustee, Riverdale Cotton Mills and other corporations, in which bill it was alleged, in substance, that all of the proceedings in the said cause of Robinson, as trustee, against Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, in the Circuit Court of the United States for the Northern District of ~~Alabama~~, were void, on the grounds, principally, that all or some of the property described in the mortgage executed by Alabama & Georgia Manufacturing Company to Robinson, as trustee, is situated in Alabama, and that said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were corporations organized under the laws of Alabama, and that said Circuit Court of the United States for the Northern District of Georgia never acquired jurisdiction of said two corporations, as organized in Alabama, and never acquired jurisdiction of their property in Alabama, and that the decree by which said mortgage was foreclosed, said property sold and Riverdale Cotton Mills placed in possession as purchaser, was void. The said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company sought in said Chambers County, Alabama, suit, to hold said Riverdale Cotton Mills and others responsible for the rents of said property since the sale of said property under said foreclosure sale, sought to redeem said property under said mortgage, and, in fact, sought to reopen and relitigate all of the questions settled and adjudicated in said Robinson suit.

Fifth.—After the filing of, and service of process on, said Chambers County suit, and after demurrer had been filed to said bill, and motion made to dismis it for the want of equity, said Riverdale Cotton Mills filed its bill in this case, ancillary to the proceedings in said

Robinson suit, (pp. 597-624, Record), setting forth in substance all of the proceedings in the case of Robinson, as trustee, against the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. The said ancillary bill was filed against said Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company as Georgia corporations, and did not admit said corporations to have been also organized under the laws of Alabama. Said ancillary bill informed said Circuit Court of the United States for the Northern District of Georgia of the effort made by said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, by their bill filed in Chambers County, Alabama, to retry and treat as a nullity all of the matter adjudicated against them in said case of Robinson, as trustee, against said two corporations in the Circuit Court of the United States for the Northern District of Georgia. In this ancillary proceeding, said Riverdale Cotton Mills prayed, (p. 605, Record), said Circuit Court of the United States for the Northern District of Georgia to protect said Riverdale Cotton Mills in the possession of said property, and to enjoin said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said suit in Chambers County, Alabama, and from prosecuting any other suit of like nature, and from interfering, in any manner, with said Riverdale Cotton Mills in the possession and enjoyment of said property. An order was issued in said ancillary proceeding, (p. 626, Record), by said Circuit Court of the United States for the Northern District of Georgia, requiring said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company to show cause why they should not be enjoined, as prayed for in said ancillary bill, and restraining said two corporations, in the (mean time), from proceeding with said Chambers County suit. Said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company filed an answer, (pp. 629-660, Record), in which they set up that each of said corporations had been incorporated

under the laws of Alabama; that said Alabama & Georgia Manufacturing Company had also been incorporated under the laws of Georgia, and that it was only as a Georgia corporation that it had been sued in said Robinson suit, and that the proceedings in said Robinson suit did not bind it as an Alabama corporation. Said answer also set up that said Huguley Manufacturing Company had never been incorporated under the laws of Georgia. It was further pleaded that the proceedings in said Robinson suit were void, and that said Circuit Court of the United States for the Northern District of Georgia, had no jurisdiction of said ancillary bill.

Sixth.—There was no evidence, (p. 665, Record), introduced in said ancillary proceedings, except the record in said Robinson suit, and there was a final decree, (p. 665, Record), in said ancillary proceedings in favor of said Riverdale Cotton Mills, and among other things, enjoining said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said Chambers County, Alabama, suit, and from interfering with the enjoyment and possession of said Riverdale Cotton Mills of said property purchased by it under said foreclosure sale in said Robinson suit. From said last mentioned decree, the appeal in this cause above referred to was prosecuted to the Circuit Court of the United States for the Fifth Circuit, which Court reversed, by a divided court, the said decree of the Circuit Court of the United States for the Northern ~~Division~~ District of Georgia in favor of said Riverdale Cotton Mills, and ordered said ancillary bill dismissed as aforesaid; holding that said Circuit Court of the United States for the Northern District of Georgia had no jurisdiction of said ancillary bill filed by said Riverdale Cotton Mills; holding that said proceeding by said Riverdale Cotton Mills was not an ancillary but an original proceeding and holding that said Alabama & Georgia Manufacturing Company, as an Alabama corporation, was not bound by said proceedings in said Robinson suit.

Wherefore, petitioner prays that a writ of certiorari

issue from this Honorable Court, directing that the record and proceedings in said Circuit Court of Appeals for the Fifth Circuit, be certified to this court for its review of the decision and judgment of said Circuit Court of Appeals in the said cause, where Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were appellants, and petitioner, Riverdale Cotton Mills, was appellee.

Petitioner further prays this Honorable Court to review and annul said judgment of reversal in said cause, and to award such judgment and decree in the said cause as right and justice may demand; and petitioner will ever pray, etc.

Thos. H. Watts,

Attorney for Petitioner.

I hereby certify that the rulings of said Circuit Court of Appeals herein set forth are, in my mind, erroneous, and that this petition is not filed for delay.

Thos. H. Watts,

Attorney for Petitioner.

To Marion Erwin,

Attorney for Respondents.

You will take notice that I will present the foregoing petition for a certiorari, to the Supreme Court of the United States in the City of Washington, D. C., on Monday, the 14th day of March, 1904, or as soon thereafter as the said Court will receive the same.

Thos. H. Watts,

Attorney for Petitioner.

I hereby acknowledge service of the foregoing petition, and of the time it will be presented to the Supreme Court of the United States, together with a copy of said petition.

Attorney for Respondents.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

RIVERDALE COTTON MILLS,
Petitioner.

vs.

ALABAMA & GEORGIA MANUFACTURING COMPANY, *ET AL.*,
Respondents.

Petition for Certiorari.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Riverdale Cotton Mills, respectfully represents:

FIRST.

On June 10, 1901, your petitioner filed in the Circuit Court of the United States for the Northern District of Georgia its bill of complaint against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, J. M. Chilton, and a firm of Welles, Bennett & Welles. Said bill was filed as ancillary to certain proceedings theretofore had in said court.

SECOND.

Said bill of complaint alleged substantially the following facts:

(1.)—The Riverdale Cotton Mills is a corporation, organized under the laws of the State of Georgia, and a citizen of and resident in that State;

(2.)—The Alabama & Georgia Manufacturing Company (hereinafter for brevity called the Manufacturing Company), is a corporation organized under the laws of the State of Georgia, but claiming to be organized also under the laws of Alabama; the Huguley Manufacturing Company (hereinafter for brevity called the Huguley Company), is a corporation organized under the laws of the State of Georgia, but claiming to be organized also under the laws of Alabama. Each of said last named corporations, if in fact organized under the laws of both States, had but one set of stockholders and directors under each organization, conducted its business as a single corporate entity with its office in Georgia, and with property situated partly in Georgia and partly in Alabama.

(3.)—On or about January 2, 1884, the Manufacturing Company, without describing itself otherwise than by name, at its office in Georgia, executed a mortgage of all its property to three trustees, to secure an issue of bonds. The trustees were: J. J. Robinson, W. T. Huguley, and W. C. Yancey.

(4.)—In 1888 all the property of the Manufacturing Company was sold subject to the mortgage under judicial proceedings in a State court in Georgia to persons who conveyed it to the Huguley Company, in which W. T. Huguley above named was interested.

(5.)—After the acquisition by the Huguley Company of this interest in the property of the Manufacturing Company, default was made in the payment of interest

due July 1, 1890, on the mortgage bonds, and the default having continued for six months, on January 20, 1891, J. J. Robinson, one of the trustees under the mortgage, brought a bill of complaint in the Circuit Court of the Northern District of Georgia against the Manufacturing Company and the Huguley Company, both described as organized under the laws of Georgia, and against W. T. Huguley, another of the trustees; the third trustee, Yancey, had died. This bill was taken *pro confesso* against Huguley. Each of the other defendants appeared and defended.

(6.)—The answers filed by the Manufacturing Company and the Huguley Company to Robinson's bill admitted that each corporation was a citizen of Georgia as alleged in that bill, admitted the execution of the mortgage and bonds by the Manufacturing Company, admitted that the Manufacturing Company had ceased to carry on business, and that its equity of redemption in the mortgaged property had passed to the Huguley Company. The answer of the Huguley Company also prayed that it be decreed entitled to any surplus proceeds on the sale of the mortgaged property.

(7.)—In the suit brought by Robinson, testimony was taken; the case was heard upon its merits; a decree was entered May 30th, 1892, foreclosing the mortgage and ordering a sale; a sale was had; the property was bought by a committee of bondholders and conveyed to a corporation called the Galeton Cotton Mills. From this decree an appeal was taken by the Manufacturing Company and the Huguley Company, to the Circuit Court of Appeals, and the decree was reversed and the cause sent back for further proceedings.

(8.)—On June 10, 1893, the Huguley Company and the Manufacturing Company filed a petition in the foreclosure suit, asking that the rents and profits from the date of the sale be decreed to the Huguley Company for an accounting and restitution. Thereupon the court ordered an account of rents and profits, and that the amount be credited on the mortgage debt.

(9.)—On March 30, 1895, a second decree for a foreclosure and sale was entered. From this decree the Huguley Company and the Manufacturing Company appealed, but the appeal was dismissed, and in May, 1896, the property was again sold, and the sale was confirmed on June 25th, 1896. On October 15, 1898, a decree was entered again confirming the sale of May, 1896, and ordering the execution of a deed; and pursuant thereto a deed was executed to the petitioner, and all the purchase money was paid into court by the petitioner.

(10.)—The Huguley Company and the Manufacturing Company appealed from the decree entered on October 15, 1898, to the Circuit Court of Appeals. The decree was confirmed, and the appellants thereupon sued out an appeal to this Honorable Court, which appeal was dismissed on February 24, 1902.

(11.)—On June 10, 1901, while the appeal to this Honorable Court last referred to was pending, the Huguley Company and the Manufacturing Company filed a bill of complaint in the Chancery Court for Chambers County, in the State of Alabama, against this petitioner, the Galeton Cotton Mills, the West Point Manufacturing Company, a corporation organized under the laws of Georgia; J. J. Robinson, and W. T. Huguley, alleging in substance that the Manufacturing Company was organized under the laws of Alabama, and as such was not made a party to the foreclosure suit brought by Robinson, and was not served with process in that suit; that the Huguley Company was a corporation organized under the laws of Alabama, that no ancillary proceedings had ever been had to foreclose the mortgage as to the mortgaged property situated in Alabama, and that all the proceedings in the Circuit Court for the Northern District of Georgia were null and void so far as concerned the mortgaged property in Alabama. The bill further sought to hold the petitioner, the Galeton Cotton Mills and the West Point Manufacturing Company, liable for the rents and profits from May, 1892.

(12.)—All the matters set up in the bill filed in the Alabama Chancery Court were or might have been set up and determined in the suit brought by Robinson in the Circuit Court. No question was ever raised in the foreclosure suit attacking the jurisdiction of the court to order a foreclosure of all the mortgaged property as well that in Alabama as that in Georgia. The Huguley Company and the Manufacturing Company in bringing their suit in Alabama seek merely to try again the same issues and the same matters already fully heard and investigated in the Circuit Court and to impeach collaterally all the decrees entered in the Circuit Court in the cause.

(13.)—The bill brought in the Alabama Chancery Court was brought by the same solicitors who represented the Huguley Company and the Manufacturing Company in the Circuit Court, to-wit: J. M. Chilton and Welles, Bennett & Welles, and these solicitors are joined for purpose of an injunction.

(14.)—The bill prayed an injunction against the further prosecution of the suit brought in the Alabama Chancery Court.

THIRD.

On the filing of the petitioner's bill of complaint in the Circuit Court for the Northern District of Georgia, a temporary restraining order was granted and a subpoena and order to show cause why an injunction should not be granted was issued.

FOURTH.

On June 21, 1901, all the respondents, without appearinging specially or otherwise objecting to the sufficiency of service on them, filed an "Answer to the bill and response to rule to show cause," signed by "Solicitors for Respondents," containing substantially the following allegations:

(1)—That both the Huguley Company and the Manufacturing Company are corporations chartered under the laws of Alabama, and that while the Manufacturing Company may have been incorporated in Georgia it was first incorporated in Alabama, and that there never was by action of the States of Georgia and Alabama any merger of the two corporations, and that the Alabama corporation is a distinct entity. That the original foreclosure suit brought by Robinson was against the Manufacturing Company, as a corporation of Georgia, and not of Alabama. That the Huguley Company was never incorporated in Georgia.

(2.)—That even if in contemplation of law the Huguley Company and the Manufacturing Company as corporations organized under the laws of Alabama were parties to the foreclosure suit they are not bound by the proceedings, because the court had no jurisdiction in that suit for want of proper diversity of citizenship, and because part of the property decreed to be sold was situated in Alabama.

(3.)—That the Circuit Court had no jurisdiction of the bill filed by your petitioner, because the plaintiff therein, and according to the allegations of the bill the corporations respondent therein, were all citizens of Georgia, and the suit was not properly ancillary.

(4.)—That under Revised Statutes, Sec. 720, the court could not issue an injunction to stay proceedings in a State court.

(5.)—That the defendants in the suit in the Chancery Court of Alabama had filed therein demurrers, pleas and answers, seting up as defences the same matters now relied on.

(6.)—That the court had no jurisdiction of the original foreclosure suit, because the plaintiff therein and one of the defendants, the Huguley Company, were both citizens of Alabama.

(7.)—That the court had no jurisdiction to order a sale in the foreclosure suit, because before any sale was made the Georgia charter of the Manufacturing Company had expired by limitation.

(8.)—That the court had no jurisdiction to order a sale, because all or a large and separable part of the property was situated in Alabama.

(9.)—The answer prayed that the court issue no further injunction or order, and dismiss the bill for want of jurisdiction of the persons and subject matter of the proceedings.

FIFTH.

On October 8, 1901, an interlocutory decree was entered continuing the injunction until the decision on the appeal then pending in this court from the final decree in the foreclosure suit. That appeal was dismissed by this court on February 24, 1902. (Huguley Mfg. Co. Galeton Cotton Mills, 184 U. S.), and on said February 24, 1902, this court refused (In re Huguley Mfg. Co. and Ala. & Ga. Mfg. Co., 184 U. S.), to grant a writ of prohibition against the Circuit Court for the Northern District of Georgia in this case. On September 29, 1902, this case was heard on the bill and proceedings and the record in the foreclosure suit. A final decree was then entered, perpetually restraining the further prosecution of the suit in the Chancery Court in Alabama.

SIXTH.

From the decree entered in September 29, 1902, the two respondent corporations took an appeal to the Circuit Court of Appeals, asigning as errors substantially:

(1.)—That the Circuit Court should have dismissed the bill for want of jurisdiction of the subject matter and of the parties.

(2.)—That the bill was not an ancillary bill.

(3.)—That the Manufacturing Company as a Georgia corporation was a party to the original foreclosure suit and the decree therein was not binding upon it as an Alabama corporation.

(4.)—That the Circuit Court had no jurisdiction of the persons of the corporations enjoined.

(5.)—That the suit for an injunction was local.

(6.)—That the issue of an injunction was prohibited by Revised Statutes, Sec. 720.

(7.)—That there was no evidence to support the decree.

(8.)—That the expiration by limitation of the charter in Georgia of the Manufacturing Company prevented the decree for sale from being operative.

(9.)—That the conveyance pursuant to the sale under the foreclosure decree of land in Alabama was ineffective.

(10.)—That the Huguley Company was not bound by the foreclosure decree.

(11.)—That the court should not in any event enjoin an accounting in which the complainant in the ancillary suit had no interest.

(12.)—That no title passed under the foreclosure sale to any property in Alabama, and it was too late now by ancillary bill to perfect the title by ordering a conveyance from the defendants in the foreclosure suit.

SEVENTH.

On the .... day of January, 1904, the Circuit Court of Appeals, Judge PARDEE dissenting, sustained the appeal

and ordered the bill to be dismissed on the ground that the Alabama & Georgia Mfg. Company, organized in Alabama, and the Huguley Manufacturing Company organized in Alabama, were different entities from the corporations of the same name organized in Georgia; were not parties to the foreclosure suit, and, therefore, were not bound by the decree therein, and could bring their bill in the State court in Alabama to redeem the mortgaged property situated in that State; and apparently also on the ground that the Circuit Court for the Northern District of Georgia had not made and could not make a valid decree for the sale of the mortgaged property situated in Alabama. The dissenting Judge was of opinion that the double incorporation did not constitute two corporate entities, and that the bill was properly ancillary and within the jurisdiction of the Circuit Court.

EIGHTH.

Your petitioner is advised that the decree of the Circuit Court of Appeals was erroneous on the following grounds:

(1.)—If either or both of the respondent corporations was incorporated both in Alabama and Georgia and was made a party to and appeared in the foreclosure suit and admitted itself to be a corporation organized in Georgia, the decree in the suit was binding upon such corporation both as a Georgia and as an Alabama corporation.

(2.)—If either or both of the respondent corporations was incorporated only in Alabama and was sued in the foreclosure suit as a corporation organized under the laws of Georgia and admitted the allegation as to citizenship, neither such corporation nor any other party to the suit could thereafter in a collateral proceeding attack the validity of the final decree in the foreclosure suit on the ground of want of jurisdiction.

(3.)—The Circuit Court for the Northern District of Georgia had power in the foreclosure suit to foreclose the whole mortgage and order a sale of the property in Alabama, as well as of that in Georgia.

(4.)—The bill filed by the petitioner in the Circuit Court for the Northern District of Georgia to restrain the further prosecution of the suit in the Chancery Court in Alabama was in all respects an ancillary bill, and the court had jurisdiction thereof regardless of the citizenship of the parties.

(5.)—The Circuit Court had jurisdiction of the persons of the respondents since they appeared generally.

(6.)—If the Circuit Court had not acquired jurisdiction of the persons of the respondents, yet as it had jurisdiction of the subject matter, the bill should not have been dismissed for want of jurisdiction.

(7.)—Revised Statutes, Sec. 720, did not prevent the issue of an injunction.

The following questions which were involved and were decided by the Circuit Court of Appeals, are of general importance and interest:

First—The effect of a decree or judgment against a corporation which is organized under the laws of several States, when sued as a corporation organized under the laws of one of those States.

Second—The right of a defendant corporation which in good faith has been sued in a Circuit Court of the United States as organized under the laws of and as a citizen of one State and has admitted the truth of the allegations, to impeach the decree or judgment collaterally on the ground that it was in fact organized under the laws of

another State, and that, therefore, the Circuit Court had no jurisdiction, because there was not the necessary diversity of citizenship.

Third—The power of a Circuit Court of the United States to foreclose in one proceeding and by one sale a mortgage on real estate situated partly in one State and partly in another, when it has personal jurisdiction over the mortgagor.

Fourth—The right of a Circuit Court of the United States to entertain as an ancillary bill a bill to restrain a suit brought in another court by persons bound by a decree of the Circuit Court to impeach a title derived under that decree, on grounds that already have been or might have been fully presented.

Fifth—The effect of Revised Statutes, Sec. 720, on the right of a Circuit Court of the United States to restrain proceedings in a State court brought by persons bound by a decree of the Circuit Court to impeach that decree and a title derived thereunder.

Your petitioner believes that the decree of the Circuit Court of Appeals for the Fifth Circuit, is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided; and your petitioner submits herewith, as a part of this application, a certified copy of the record, of the decree of reversal, and of the opinions of the Judges of the Circuit Court of Appeals, and a brief in support of this petition.

Wherefore, your petitioner respectfully prays: That a writ of *certiorari* may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, requiring said Court to certify and send to this Honorable Court, on a day certain therein to be designated, a full and complete transcript of the record and all proceedings of said United States Circuit Court of Appeals in said case entitled Alabama & Georgia Manufacturing Company, *et al.* vs. Riverdale Cotton Mills, No. 1258, to the end that said case may be reviewed and determined by this Honorable Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem appropriate; and that the said judgment of the said United States Circuit Court of Appeals may be reversed by this Honorable Court.

RIVERDALE COTTON MILLS,

By

Thomas N. Watts

Louis D. Brandeis

William H. Thomas

Its Solicitors.

IN THE UNITED STATES SUPREME COURT.

RIVERDALE COTTON MILLS,
Petitioner,

v.

ALABAMA & GEORGIA MFG. CO., ET AL.,
Respondents.

BRIEF OF THOMAS H. WATTS, FOR PETITIONER.

1. STATEMENT OF THE CASE.

In January, 1891, one Robinson, as trustee, alleging himself to be, and who was, a citizen of Alabama, filed his bill in the Circuit Court of the United States for the Northern District of Georgia, (p. 2, et seq., Record), to foreclose a mortgage executed by Alabama & Georgia Manufacturing Company on January 2, 1884, to secure certain bonds issued by it. This mortgage conveyed an indivisible property operated as one concern, situated partly in Alabama and partly in Georgia. To the said Robinson bill, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, both alleged to be corporations organized under the laws of Georgia, were made defendants. In the said Robinson bill, it was alleged that said Alabama & Georgia Manufacturing Company was insolvent and had ceased to do business; that under a decree rendered in a court of the State of Georgia, all of the property of said Alabama & Georgia Manufacturing Company had been sold in January, 1890, subject to the mortgage above mentioned, to parties who conveyed the same to said Huguley Manufacturing Company, and that said Huguley Manufacturing Company had gone at once into, and were still in,

the possession of all of said property covered by said mortgage. The Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company answered said bill of Robinson, as trustee, (p. 18, Record), admitting the citizenship, the sale of the property of the Alabama & Georgia Manufacturing Company, and the purchase and possession thereof by the Huguley Manufacturing Company, subject to the said mortgage as alleged in said Robinson bill, and admitting that the said Alabama & Georgia Manufacturing Company had gone out of business; but said answer contested the right of the said trustee to have said mortgae foreclosed. The Huguley Manufacturing Company filed an amendment to its answer (p. 27, Record), alleging that it was the owner of the property mentioned in the Robinson mortgage, subject to said mortgage. There was a decree in said Robinson suit, in May, 1892, foreclosing said mortgage and ordering all the property covered thereby in Georgia and Alabama sold to satisfy the said mortgage, and in the said decree, (p. 164, Record), the court found among other things, the following: "In the year 1888, a bill in equity was filed in the State courts by other creditors and a receiver appointed for the factory property named, who, after holding same for a short time, sold said property by order of the court, the sale being made subject to the bonds and mortgage before alluded to. The purchasers at this sale afterwards organized themselves into what is known as the Huguley Manufacturing Company." Under said decree of said Circuit Court of the United States for the Northern District of Georgia, said mortgaged property was sold and went into the possesion of the purchaser, and said sale was confirmed, (p. 185, Record). There was an appeal from said decree of sale, and said decree of sale was reversed in the Court of Appeals for the Fifth Circuit, May 30, 1893.

In May, 1895, there was a second decree of foreclosure and sale of said property, in which decree (p. 563, Record), it was found by the court, among other things, "a mortgage under which the property was sold, was made by the Alabama & Georgia Manufactur-

ing Company in January, 1884. Subsequently, by reason of some litigation in the Superior Court, the property of the Alabama & Georgia Manufacturing Company went into the hands of a receiver and was sold, and bought by persons who afterwards organized the Huguley Manufacturing Company, they buying at the receiver's sale, subject to the mortgage of Robinson, trustee." There was an appeal from said second decree to the Circuit Court of Appeals, where said decree was affirmed in January, 1896. After the second appeal, on the petition of Huguley Manufacturing Company, (p. 200, Record), a decree was rendered in the Circuit Court of the United States for the Northern District of Georgia, requiring Robinson, as trustee, to credit on the debt secured by the mortgage, the value of the use and occupation of the property between the times of the first and second sales. In March, 1896, the Circuit Court for the Northern District of Georgia passed an order requiring the second foreclosure sale, which had been decreed but stopped by the second appeal, to be proceeded with, and said property was sold under said last decree in September, 1898. At said sale, L. Lanier, acting for Riverdale Cotton Mills, the petitioner, became the purchaser of all of said property of the Alabama & Georgia Manufacturing Company in Georgia and Alabama, and the said sale was confirmed, and petitioner was put into possession of all of said property. There was a third appeal to the Circuit Court of Appeals, where the decrees and order of the Circuit Court were affirmed in May, 1899. From this last decree of affirmance in said Circuit Court of Appeals, an appeal was sued out to the Supreme Court of the United States, which last named court dismissed said appeal on the 24th day of February, 1902. (Huguley Mfg. Co. v. Galeton Cotton Mills, 184 U. S.)

In June, 1901, said Alabama & Georgia Manufacturing Company, and Huguley Manufacturing Company, alleging themselves to be corporations organized under the laws of Alabama, by the same solicitors who had represented said two corporations in said Robinson suit, filed their bill, (pp. 610-624, Record), in the Chancery

Court of Chambers County, Alabama, against said Robinson as trustee, Riverdale Cotton Mills and other corporations, in which bill it was alleged, in substance, that all of the proceedings in the said cause of Robinson, as trustee, against Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, in the Circuit Court of the United States for the Northern District of Georgia, were void, on the grounds, principally, that all or some of the property described in the mortgage executed by Alabama & Georgia Manufacturing Company to Robinson, as trustee, is situated in Alabama, and that said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were corporations organized under the laws of Alabama, and that said Circuit Court of the United States for the Northern District of Georgia never acquired jurisdiction of said two corporations, as organized in Alabama, and never acquired jurisdiction of their property in Alabama, and that the decree by which said mortgage was foreclosed, said property sold and Riverdale Cotton Mills placed in possession as purchaser, was void. The said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company sought in said Chambers County, Alabama, suit, to hold said Riverdale Cotton Mills and others responsible for the rents of said property since the sale of said property under said foreclosure sale, sought to redeem said property under said mortgage, and, in fact, sought to reopen and relitigate all of the questions settled and adjudicated in said Robinson suit.

After the filing of, and service of process on, said Chambers County suit, and after demurrer had been filed to said bill, and motion made to dismiss it for the want of equity, said Riverdale Cotton Mills filed its bill in the case, ancillary to the proceedings in said Robinson suit, (pp. 597-624, Record), setting forth in substance all of the proceedings in the case of Robinson as trustee, against the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. The said ancillary bill was filed against said Alabama & Georgia Manufacturing Company and the Hu-

guley Manufacturing Company as Georgia corporations, and their solicitors and did not admit said corporations to have been also organized under the laws of Alabama. Said ancillary bill informed said Circuit Court of the United States for the Northern District of Georgia of the effort made by said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, by their bill filed in Chambers County, Alabama, to retry and treat as a nullity all of the matter adjudicated against them in said case of Robinson, as trustee, gainst said two corporations in the Circuit Court of the United States for the Northern District of Georgia. In this ancillary proceeding, said Riverdale Cotton Mills prayed, (p. 605, Record), said Circuit Court of the United States for the Northern District of Georgia to protect said Riverdale Cotton Mills in the possession of said property, and to enjoin said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said suit in Chambers County, Alabama, and from prosecuting any other suit of ilke nature, and from interfering, in any manner, with said Riverdale Cotton Mills in the possession and enjoyment of said property. An order was issued in said ancillary proceeding, (p. 626, Record), by said Circuit Court of the United States for the Noetnrrh District of Georgia, requiring said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company and their solicitors to show cause why they should not be enjoined as prayed for in said ancillary bill, and restraining said two corporations, in the mean time, from proceeding with said Chambers County suit. Said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company filed an answer, (pp. 629-660, Record), in which they set up in substance that each of said corporations had been incorporated under the laws of Alabama; that said Alabama & Georgia Manufacturing Company had also been incorporated under the laws of Georgia, and that it was only as a Georgia corporation that it had been sued in said Robinson suit, and that the proceedings in said Robinson suit did not bind it as an Alabama corporation. Said answer also set up that

said Huguley Manufacturing Company had never been incorporated under the laws of Georgia. It was further pleaded that the proceedings in said Robinson suit were void, and that said Circuit Court of the United States for the Northern District of Georgia, had no jurisdiction of said ancillary bill.

While this case was pending in the Circuit Court of the United States for the Northern District of Georgia, said Huguley Manufacturing Company unsuccessfully endeavored to obtain from this court a writ of prohibition against said Circuit Court . (In re Huguley Mfg. Co., 184, U. S.)

There was no evidence, (p. 665, Record), introduced in said ancillary proceedings, except the record in said Robinson suit, and there was a final decree, (p. 665, Record), in said ancillary proceedings in favor of said Riverdale Cotton Mills, and among other things, enjoining said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said Chambers County, Alabama, suit, and from interfering with the enjoyment and possession of said Riverdale Cotton Mills of said property purchased by it under said foreclosure sale in said Robinson suit. From said last mentioned decree, the appeal in this cause above referred to was prosecuted to the Circuit Court of the United States for the Fifth Circuit, which Court reversed, by a divided court, the said decree of the Circuit Court of the United States for the Northern District of Georgia in favor of said Riverdale Cotton Mills, and ordered said ancillary bill dismissed as aforesaid; holding that said Circuit Court of the United States for the Northern District of Georgia had no jurisdiction of said ancillary bill filed by said Riverdale Cotton Mills; holding that said proceeding by said Riverdale Cotton Mills was not an ancillary but an original proceeding and holding that said Alabama & Georgia Manufacturing Company, as an Alabama corporation, was not bound by said proceedings in said Robinson suit.

2 THE JURISDICTION OF THE CIRCUIT COURT.

The Circuit Court of the United States for the Northern District of Georgia had complete jurisdiction of the suit by Robinson, trustee, against Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. It was alleged in that suit that Robinson was a resident citizen of Alabama and that the two defendant corporations and W. T. Hugley were citizens of Georgia. The mortgaged lands were alleged to be partly, if not entirely in Georgia and, by answer filed in said cause, these two corporations admitted that they were corporations resident citizens of Georgia, that their place of business was in that State, and that Robinson was a citizen of Alabama. (p. 18, Record). The citizenship of the parties, plaintiff and defendant as alleged in the bill was never controverted nor denied.

These facts gave the Circuit Court jurisdiction of the case.

Muller vs. Dows, 94 U. S. 444.
Horn vs. Boston, 18 F. R. 50.
Railway Co. vs. Whitton, 13 Wall. 270.
Rouse vs. Letcher, 156 U. S. 47.
Connolly vs. Taylor, 2 Pet. 556.
Gregory v. Van Ee., 160 U. S. 64.

The trustee and mortgagor and Huguley Company having been before this Court in the Robinson case, such jurisdiction was obtained of their persons therein as efficaciously to foreclase the mortgage and bar all their rights to the property involved.

Craft vs. Indianapolis, 46 N. E. R., 1135-6.
Phelps vs. McDonald, 99 U. S. 298, 308.
Wilmer vs. Railroad, 2 Wood, 409-447; 30 F. cases.
Miller vs. Sherry, 2 Wallace, 248-9.
Cole vs. Cunningham, 133 U. S. 116.
Massie vs. Watts, 6 Cranch, 157-60.
Revised Statutes, Sec. 629.

The allegation of the bill in the Robinson case was to the effect that the lands described in the mrotgage were situated partly in Georgia and partly in Alabama. This allegation gave the court jurisdiction to foreclose said mortgage as to all of said lands.

Muller vs. Dows, 94 U. S. 444.
Wabash vs. Illinois, 118 U. S. 557.
Jones on Railroad Securities, Sections 413-14.

A part of the land being in Georgia, jurisdiction of the whole land was acquired by the Court.

Muller vs. Dows, 94 U. S. 444.
McIlrath vs. Pittsburg, 55 Pa. St. 189.
3 Cook on Corporations, 4 ed. Sec. 840.
Woodbury vs. Allegheny, 72 F. R. 371.
Jones on Railroad Securities, Secs. 413-14.
Massie vs. Watts, 6 Cranch, 148.
9 Notes U. S. Rep. pp. 118-19.

The Court takes judicial notice of State boundaries.

Coffee vs. Grouver, 123 U. S. 11.
17 Encyc. Law, 2d ed. 911.

And judicial notice is conclusive.

Schollenberger vs. Pennsylvania, 171 U. S. 1.
17 Encyc. Law, 2d ed. 911, note 2.

The Court judicially knows the location of lands according to government surveys.

Chambers vs. Ringstaff, 69 Ala. 140.

The Western high ordinary water mark of the Chattahoochee river is the boundary line between the States of Alabama and Georgia.

Alabama vs. Georgia, 23 How. 505.

3. THIS PROCEEDING IS ANCILLARY.

An examination of the prayer of the bill filed by the Riverdale Cotton Mills will show that the relief sought is limited to the rights of the complainant sought to be invaded in the Chambers County suit and to a protection of said Riverdale Cotton Mills in the possession and ownership of the property purchased and paid for and the upholding of the dignity and authority of the Circuit Court of the United States for the Northern District of Georgia. The object is to prevent the Riverdale Cotton Mills from being compelled to litigate in another jurisdiction matters already adjudicated and forever settled by the decrees of the Circuit Court of the United States for the Northern District of Georgia and by the decree of the Circuit Court of Appeals on the appeals taken in the Robinson case.

The mortgage foreclosed did not purport to be executed by the Alabama & Georgia Manufacturing Company of Alabama, nor by the Alabama & Georgia Manufacturing Company of Georgia, but simply by the Alabama & Georgia Manufacturing Company, a corporation. It was sued as a Georgia corporation and admitted itself to be such. There was a decree against it and the mortgage was foreclosed. If, as an Alabama corporation, it has any rights as to said property, different from those it had as a Georgia corporation, the United States Court for the Northern District of Georgia has ample jurisdiction in a proceeding ancillary to the original suit to protect said rights and the said court has also, we respectfully insist, the right and power in a proceedings ancillary to the original suit, on the idea of doing complete justice, to prevent said Alabama & Georgia Manufacturing Company from asserting in another tribunal its alleged rights in the property, and said court has the right to determine the question as to whether the two corporations are not in property and in name the same.

Ober v. Gallagher, 93 U. S. 199.
Sunflower Oil Co. v. Wilson, 142 U. S. 313.
Root v. Woolworth, 150 U. S. 401.
French v. Hay, 22 Wall, 250.

If, from inadvertence, or otherwise, some of the rights of the parties have been left unadjudicated, or in order to do complete justice, or to enforce its own decrees, a chancery court always has the power, in an ancillary proceeding, to complete its work and not remit said parties to any other tribunal to obtain their rights. Said court is bound to protect the purchaser under its decree in the possession of the property sold. This has been decided too often to need authority to support.

This proceeding was not an original, but an ancillary bill, and being such, the court had jurisdiction, regardless of the citizenship of the parties.

Rouse v. Letcher, 156 U. S. 47.
Gregory v. Van Ee, 160 U. S. 64.
Carey v. Houston, etc., 161 U. S. 115.
Pacific, etc. v. Missouri, etc., 111 U. S. 505.
Root v. Woolworth, 150 U. S. 401.
White v. Ewing, 159 U. S. 36.
New Orleans v. Fisher, 180 U. S. 185.

Are not these two corporations the same? Have they not the same blood, veins and sinew? Can one of them move without the other? Are they not as His Honor, Justice Pardee says, like Siamese twins, and what one knows the other knows, what the one feels, the other feels, what binds the one, binds the other?

The Alabama & Georgia Manufacturing Company, whether chartered in Alabama or in Georgia, had the same officers and the same office. When one of the corporations met, the other necessarily met also, for each corporations had the same officers, stockholders and directors, if the Alabama & Georgia Manufacturing Company was ever organized as a corporation at all. If one of the corporations owned property, the other also owned the same property. If one of them made a mortgage, the other necessarily made it also. It is not shown that either corporations had any property which the other did not also own. When the Alabama & Georgia Manufacturing Company, as chartered under the laws of Georgia, was called into court in the Robinson

suit, the same corporation, as chartered in Alabama was necessarily there also, although not named, and had the duty then and there thrust upon it of asserting its rights, if it had any.

Let us see to what a condition the decision drives us. Robinson could not have sued the Alabama and Georgia corporations, either in Alabama or in Georgia, in the same suit. He must therefore have filed his suit in a State court in Alabama, which would have had no jurisdiction to order the sale of the mortgaged property in Georgia, or in a State Court in Georgia, which would have had no jurisdiction to order the sale of the mortgaged lands in Alabama, or a separate suit in each jurisdiction and run the risk of having one or the other court hold that the first suit brought was a bar to the bringing of the other. All that the law requires, we respectfully submit, is that the party, whose interest is to be affected, should be before the court, whether in his true name or not, in other words, should have his day in court. That being accomplished as to the Alabama & Georgia Manufacturing Company as a Georgia corporation, it bound the same corporation under its Alabama charter, when it is shown that the two corporations are one and the same.

When a corporation is organized under the laws of two different States, but has in each State the same stockholders, officers and property, said corporation is a citizen of each of said States for the purposes of jurisdiction and proceedings against said corporation is one State are binding upon it in the other.

Muller vs. Dows, 94 U. S. 444.
Union Trust Co. vs. Rochester, 29 F. R. 609.
Louisville T. Co. vs. Louisville R. Co. 75 F. R. 433.
Graham vs. Boston, 108 U. S. 161.
Nashua vs. Boston, 16 A. & E. R. cases. 488.
Hawkins vs. Glenn, 131 U. S. 319.
2 Van Fleet Former Adjudication, pp. 994-6.
Hirschl Combinations, pp. 218-219.
Cook on Corporations, 4 Ed. Secs. 9, 10, 237, 2[illegible].

And the plaintiff may select in which State to sue.

Uphaff vs. Chicago, etc., 5 Fed. 550.

The real parties defendant to the Robinson suit and complainant to the Alabama suit under the names of the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were the stockholders respectively of those two corporations, and while in each suit they are by a fiction of the law presumed to be citizens of the jurisdiction in which the suit was brought they are the same and identical persons; and proceedings and judgments against the corporations in one jurisdiction are binding upon the corporation in the other jurisdiction without regard to the descriptive character by which it sues or was sued.

Muller vs. Dows, 94 U. S. 444-5.
Home v. B. & L. R. Co., 18 Fed. 50.
N. & L. R. Co. v. B. & L. R. Co., 19 Fed. 804.
Memphis v. Alabama, 107 U. S. 585.

In Root vs. Woolworth, 150 U. S. 401, there had been a suit in the Circuit Court of the United States for the District of Nebraska by one Morton against one Root, in which suit, Morton's title to a piece of land had been established against the said Root. Afterwards Woolworth acquired Morton's title. Root re-entered upon the land claiming no other title than that which had been decided to be inferior to the title of Morton. Woolworth filed his bill in said Circuit Court for the District of Nebraska to enforce the decision before that made in favor of Morton, and prayed an injunction against Root enjoining him from asserting any title to said land against Woolworth. The Supreme Court of the United States held that the Circuit Court of Nebraska had jurisdiction of the case upon the ground that each court of equity has jurisdiction to carry into effect its own decree, orders and judgments and held that Woolworth being privy in estate to Morton had the right to file the bill and should not be compelled to relitigate the question of title with Root.

See also Story Eq. Pl., Sec. 429.

In Montgomery vs. Tutt, 11 California, 190, it is said, "The power of the Court to issue the judicial writ or to make an order and enforce the same by writ of assistance, rects upon the obvious principle that the power of the Court to afford a remedy must be co-extensive with its jurisdiction of the subject-matter. Where the Court possesses jurisdiction to make a decree, it possesses the power to enforce its execution. * * * The title held by the mortgagor passes under the decree to the purchaser upon the consummation of the sale by the master's or the sheriff's deed. As against all the parties to the suit, the title is gone and, as the right to the possession, follows the title, it would be a useless and vexatious course to require the purchaser to obtain such possession by another suit. Such is not the course of procedure adopted by a court of equity. When that court adjudges a title to either real or personal property to be in one as against another, it enforces its judgment by giving the enjoyment of the right to the party in whose favor it has decided."

See also Story Eq. Pl., Sec. 959.
Kershaw vs. Thompson, 4 Johns Ch. 609.

It is no objection to the action of the Circuit Court of the United States for the Northern District of Georgia that the suit which the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were restrained from prosecuting was pending in a Chancery Court in Alabama.

In French vs. Hay, 22 Wallace 250, the suit commenced and which the parties thereto were enjoined by the Circuit Court of the United States for the Eastern District of Virginia from prosecuting had been commenced and was pending in the District Court of the City and County of Philadelphia and in French vs. Hay, the Supreme Court of the United States says, "The Court having jurisdiction *in personam* had power to require the defendant to do or to refrain from doing anything be-

yond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory * * * While the jurisdiction lasted, it was exclusive and could not be trenched upon by any other tribunal."

See also:—
Watts vs. Waddle, 6 Pet. 391.
Lewis vs. Darling, 16 How. 1.
Hagan vs. Lucas, 10 Pet. 400.
Taylor vs. Tainter, 16 Wall. 370.

4 ALABAMA & GEORGIA MANUFACTURING COMPANY NOT A NECESSARY PARTY.

It is immaterial whether there was or was not an Alabama corporation known as the Alabama & Georgia Manufacturing Co. And it is immaterial in what capacity, whether as organized under the Georgia or Alabama laws, it executed the Robinson mortgage or had title to the lands it is bound by the proceedings in the Robinson case, because, as a matter of fact, at the time of the institution of the Robinson suit in January, 1891, the Alabama & Georgia Manufacturing Co., whether it be called an Alabama or a Georgia corporation, had no interest of any sort, kind, character or description, in the property which was sold, and was not for that reason, either as an Alabama or a Georgia corporation, a necessary party to the suit.

Wilkinson v. May, 69 Ala. 33.
Thomas v. Jones, 84 Ala. 302, and authorities there cited.
Kerr v. Watts, 6 Wheat. 550.
Boon v. Chiles, 8 Pet. 532.

The proof unquestionably shows, as hereinabove set forth, that in January, 1890, the Superior Court of Troup County, Georgia, sold all the property in Alabama and Georgia of the Alabama & Georgia Manu-

facturing Co., to parties who formed themselves into the Huguley Manufacturing Co. The evidence without conflict shows that the Huguley Manufacturing Co. went into possession of all of said property in Alabama and Georgia in pursuance to said sale; that said Huguley Manufacturing Co. treated the property as its own; tore down old buildings and erected new, changed the machinery, mortgaged property and put the Alabama & Georgia Manuufacturing Co. entirely out of the possession of each and all of the said property in Alabama and in Georgia. And the evidence unquestionably shows that in January, 1891, when Robinson filed his bill to foreclose said mortgage, all of the interest and possession of the Alabama & Georgia Manufacturing Co. in Alabama and Georgia had ended. And at the time said Chambers County suit was filed, to-wit: on the 2d day of May, 1901, the Alabama & Georgia Manufacturing Co. had been out of possession of each and all of said property for nearly ten years and a half, and was, therefore, barred by the statute of limitations, as to any right, claim or title to said property.

In answer to this unquestioned evidence, it is said that the record does not show that the Alabama & Georgia Manufacturing Co. as an Alabama corporation, was made a party to the proceedings in the Superior Court of Troup County, Georgia, and that the evidence does not show that said Superior Court ever obtained jurisdiction of the Alabama & Georgia Manufacturing Co. as an Alabama corporation, and, therefore, it is contended that the sale to the Huguley Co. as to the lands in Alabama of the Alabama & Georgia Manufacturing Co. was void.

Admitting for the sake of the orgument that the Alabama & Georgia Manufacturing Company of Alabama was not made a party to the proceedings in the Superior Court of Troup County, Georgia, and that for that reason that court did not acquire any jurisdiction to sell the lands in Alabama, yet an unanswerable answer to that proposition is, that the Alabama & Georgia Manufacturing Co. have been out of the possession of said property by virtue of said

sale under the decree of said Superior Court for more than ten years before the filing of the Chambers County suit and regardless of whether said sale gave title to the purchasers or not, of the lands in Alabama, the adverse possession of said lands by the Huguley Manufacturing Co. for about ten years and a half before the filing of the bill in Chambers County, Alabama, bars said Alabama & Georgia Manufacturing Co. from disputing the validity of the title which the Huguley Manufacturing Co. claims, and which the Alabama & Georgia Manufacturing Co. admitted in the peititon filed by the Alabama & Georgia Manufacturing Co. and Hugley Manufacturing Co. as shown on page 200 of the record.

It is also claimed that the proceedings in the Robinson case were invalid because the sale of the mortgaged property was not made until after the legal death of the Alabama & Georgia Manufacturing Co. as a Georgia corporation. If it was material at all that a decree in said case should have been redered against the Alabama & Georgia Manufacturing Co. which, by all the proof had lost, long before any of the said proceedings were had, all of its right, tjtle and interest in the mortgaged property, then we say that the sale was nevertheless valid, nothwithstanding the legal death of the Alabama & Georgia Manufacturing Co. The sale was but the execution of the decree which had previously and during the life of the Alabama & Georgia Manufacturing Co. been rendered. At the time the rights of the parties were adjudged, at the time the equities were settled, to-wit: in May, 1895, it is not pretended that the charter of the Alabama & Georgia corporation had expired. It is, therefore, immaterial whether at the time of the sale said corporation had a legal existence or not.—Collingsworth v. Horn, 4 Stew. & Port. (Ala.) 237; Gayle v. Bancroft, 22 Ala. on p. 322; Bragner v. Langmead, 7 Durn & East. 20.

6 THE PLEADINGS IN THE ANCILLARY SUIT.

The contents of the bill filed by the Riverdale Cotton Mills have already been stated.

It is claimed that there was no answer filed to said ancillary bill and that the final decree was rendered without first taking decrees pro confesso against the defendants. A decree pro confesso is only proper where there is no answer.

Rule 18, Equity Prac., U. S. Courts.

There was answer (pp. 629 to 660, Record).

It is claimed that this was not an answer.—Let's test it.

The paper which we claim was an answer was headed, "Answer to the bill and response to the rule to show cause."

In the first place, they admit the filing of the bill in Chambers County attached as an exhibit to the ancillary bill. They then attempt to show that the two corporations are Alabama corporations, and that the Alabama & Georgia Manufacturing Co. had also been incorporated in the State of Georgia. They say that there never was any merger of the Alabama & Georgia Manufacturing Co. as organized in Alabama and in Georgia, but that there were two separate corporations and they plead that it was only the Georgia corporation known as the Alabama & Georgia Manufacturing Co. which was sued in the Robinson suit. They denied the allegation of the ancillary bill that the Huguley Manufacturing Co. was a Georgia corporation (although in the Robinson suit, said Huguley Manufacturing Co. had asserted itself to be a corporation organized under the laws of Georgia. p. 513.) Said answer then proceeds to plead that the Circuit Court of the United States for the Northern District of Georgia has no jurisdiction to act in the ancillary proceedings for the reasons:

First, that the complainant, the Riverdale Cotton Mills, is a citizen of Georgia, and the Alabama & Geor-

gia Manufacturing Co. and Huguley Manufacturing Co. were also stated to be citizens of Georgia.

This point is not tenable.—Root v. Woodworth, 150 U. S. 401; Krippendorf v. Hyde, 110 U. S. 276.

Second, that the court has no jurisdiction because the suit to foreclose the Robinson mortgage was then pending in the Supreme Court of the United States. (A contention wholly untenable as shown by the following authorities):

> 7 Encyc. of Plead. & Prac., 330-1.
> Hinson vs. Adrian, 91 N. C., 372.
> Allen vs. Allen, 80 Ala. 154.
> Jennings vs. Carson, 4 Cranch, 2.
> Spring vs. S. C. Insurance Co., 6 Wheat., 518.

Third, because the proceedings do not relate to bankruptcy, and that under section 720 of the revised statutes of the United States, said court has no jurisdiction to enjoin proceedings in a State court.

This is an injunction against parties over whom the court has acquired jurisdiction in the Robinson suit, and, therefore, had a right to control.—French v. Hay, 22 Wall. 250.

Fourth, because in the Chambers County suit certain pleadings had been filed.

It was absolutely necessary to file an answer in the Chambers County suit within thirty days after the filing of said bill to prevent the rendition of a decree pro confesso.

Fifth, because the charter of the Alabama & Georgia Manufacturing Co. granted by the State of Georgia, had expired before the sale of the property was made in the foreclosure proceedings to the petitioner.

It is not alleged, as was a fact, that said charter had expired when the *decree* of sale was rendered.

Sixth, because all of the property sold was situated in Alabama, which was shown not to be true.

Seventh, because a part of the lands were situated in Alabama and a part in Georgia.

And then said answer avers the granting of charters by Alabama and Georgia to the Alabama & Georgia Manufacturing Co., and the granting by Alabama of a charter to the Huguley Manufacturing Co., and pleads that the Alabama & Georgia Manufacturing Co. and Huguley Manufacturing Co., as corporations under the laws of Alabama, were never parties to said foreclosure proceedings in the Robinson case; that the suit in Chambers County is for redemption, whereas the suit in the Robinson proceedings was for foreclosure.

This was certainly an answer.

It is also said there was no replication to the answer. It is too late to make any such point. The time for making that point was in the Circuit Court and can not be raised for the first time in an Appellate Court.

Fritz v. Stover, 22 Waly. 769.
Central etc. v. Connecticut etc., 104 U. S. 54.

7. THE ANSWER WAS NOT EVIDENCE.

We admit that the rule of pleading is that where a case in equity is tried upon the bill and answer alone, the allegations of the answer are to be taken as true. This rule, however, has no application whatever in this case. There is another rule which has a great deal more force, and to which the appellants must conform, and that is, that where a case in equity is tried upon the pleadings and proof, as this case was tried, the allegations of the answer setting up new matter amount to nothing unless supported by proof.

In this case the evidence contained in the Robinson case which was in evidence, (p. 665) and which if not in evidence was necessarily in the mind of the court being a part of its own records, showed to be true all of the material allegations of the ancillary bill except the allegation that the Alabama & Georgia Manufacturing Co. and Huguley Manufacturing Co. had filed their bill in Chambers County, Alabama, seeking to re-

open and re-litigate all of the questions which had been adjudicated against them in the Robinson suit. This Chambers County bill was attached as an exhibit to the ancillary bill, and the answer not only admitted that such a bill had been filed, but sought to uphold it as a proper proceeding and not being, as we contend it was, a contempt of the Circuit Court of the United States for the Northern District of Georgia. In the absence of any proof on the part of the appellants to sustain the allegation that the Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co. were Alabama corporations, the court below properly paid no attention to said allegation, because the record in the Robinson case showed each of these corporations to be Georgia corporations; showed that they had admitted themselves to be Georgia corporations; showed that they had admitted the property named in the mortgage to belong to the corporations as Georgia corporations; and showed that the Alabama & Georgia Manufacturing Co. organized under the laws of Georgia had executed the mortgage which Robinson foreclosed. The proof, therefore, before the Circuit Court made out in every essential particular, the allegations of the ancillary bill. Upon said proof, and in the absence of countervailing proof, it was the unquestioned duty of the Circuit Court to render the decree which was rendered.

An allegation in an answer entirely impertinent to the bill, (viz, the dual existence of said Alabama & Georgia Manufacturing Company), cannot be established as evidence, even though the plaintiff neglected to file a replication.

Gunnel v. Bird, 10 Wall. 304.

New matter in an answer in response to anything in the bill, must be sustained by proof to be of any avail as a defense.

Roach v. Summers, 20 Wall. 165.
McCoy v. Rhodes, 11 How. 131.
Seitz v. Mitchell, 94 U. S. 580.

Where an answer admits a fact and insists upon a disputed fact by way of avoidance, the fact admitted is established, but the fact insisted upon (viz, the dual existence of the Alabama & Georgia Manufacturing Company) must be proved.

Clements v. Nicholson, 6 Wall. 299.
Clarke v. White, 12 Pet. 178.
McCoy v. Rhodes, 11 How. 131.

The Supreme Court of Alabama, in McDonald v. Mobile Life Insurance Co., 56 Ala., on page 470, says: "Relief can only be granted on allegations and proof, and the latter will never be allowed to supply omissions or defects in the former (and e converso, we say). Allegations, *admitted or proved* are the only premises which will uphold a chancery decree."

See also Floyd v. Ritter, 5 Ala. 356.

"In equity a party cannot succeed upon a case proved, but not alleged, any more than upon a case alleged but not proved."

Foster v. Goddard, 1 Black, 506.
Grosholz v. Newman, 21 Wall. 481.

An answer to a bill in equity, though sworn to, is worthless as *evidence*, in so far as it sets up independent matter, not responsive to the averments of the bill.

Barton v. Barton, 15 Ala. 400.
Gordon v. Bell, 50 Ala. 213.

6th. The burden of proving a disputed fact rests upon the party affirming its existence and claiming to derive right and benefit from it.

Lehman v. McQueen, 65 Ala. 570.

When the law casts the burden of proof upon a party, if he does not offer evidence of the fact, for all the purposes of the particular case, the non-existence of the fact must be assumed.

Lehman v. McQueen, 65 Ala. 570.

Here every material allegation of the ancillary bill was proved by the record in the Robinson suit, and by the admissions of the answer. Not one single allegation of the answer, setting up new matter, is supported by any evidence. The allegations of the answer must then be disregarded.

Lehman v. McQueen, 65 Ala. 570.

8.—But, if we admit, for the sake of the argument, that the proof supports the allegations of the answer or that the answer itself is evidence, yet, we respectfully insist that the decree of the Circuit Court for the Northern District of Georgia was correct and should have been affirmed in the Circuit Court of Appeals, for there was nothing in the answer and nothing in the proof which contradicted the facts that the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company had been sued in the Robinson case, and, although each of these corporations was sued as, and, admitted itself to be, a Georgia corporation, yet the decrees in the Robinson suit rendered against these two corporations, as chartered under the laws of Georgia, were binding upon them, as organized under the laws of Alabama.

Muller v. Dows, 94 U. S. 445.
And other authorities supra.

Neither the answer nor the proof controverts the fact that the equity of redemption of the Alabama & Georgia Manufacturing Company in all of the property involved was lost to it and vested in the Huguley Manufacturing Company more than ten years before the filing

of this ancillary bill and that by the sale of the mortgaged property in the Robinson suit the debt of the Alabama & Georgia Manufacturing Company was extinguished. There was no contradiction either of the fact, shown by the record, that the Huguley Manufacturing Company in the Robinson suit had prayed for and been awarded the rents of the mortgaged property for the time elapsing between the two sales. These facts should forever estop these two corporations from contesting or disputing what was done in the Robinson suit.

Respectfully submitted,

Hugh H. Watts,

Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

ORIGINAL.

RIVERDALE COTTON MILLS

v.

ALABAMA AND GEORGIA MANUFACTURING CO. ET AL.

BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR CERTIORARI.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Of Counsel for Petitioner.

Supreme Court of the United States.

RIVERDALE COTTON MILLS

v.

ALABAMA AND GEORGIA MANUFACTURING CO. ET AL.

BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR CERTIORARI.

STATEMENT OF FACTS.

This is a petition by the Riverdale Cotton Mills, a corporation organized under the laws of Georgia, for a writ of *certiorari* to review a decree of the Circuit Court of Appeals for the Fifth Circuit dismissing for want of jurisdiction a bill filed by the petitioner against the respondents in the Circuit Court for the Northern District of Georgia. The following are briefly the material facts as shown by the petition and record.

The Alabama and Georgia Manufacturing Co. (hereinafter for convenience called the Manufacturing Co.) was chartered by special act of the State of Alabama on February 7, 1866 (Record, p. 618). On March 12, 1866, the same individuals, as incorporators, were chartered under the same name and for the same purposes by the State of Georgia (Record, p. 653). This corporation acquired and

for many years operated a manufacturing plant partly in Alabama and partly in Georgia.

By deed of trust dated January 2, 1884, this corporation mortgaged all its property to three trustees to secure an issue of bonds (Record, p. 607). Subsequently all the title of the Manufacturing Co. to the equity of redemption became vested, apparently by sale under a decree of a state court in Georgia, in the Huguley Manufacturing Co. (hereinafter for convenience called the Huguley Co.).

Default was made in the payment of the interest on the mortgage bonds, and on January 20, 1891, one of the three trustees filed a bill of complaint in the Circuit Court for the Northern District of Georgia against the Manufacturing Co. and the Huguley Co. both described as corporations organized under the laws of Georgia, and another of the trustees who was interested in the Huguley Co. and adversely to the bondholders. The third trustee was then dead. This bill sought a foreclosure of the mortgage. The defendant corporations duly appeared and filed an answer admitting the facts alleged as to their incorporation and citizenship. A decree of foreclosure was entered, a sale was ordered and made, the property was purchased in behalf of the bondholders and conveyed to the Galeton Cotton Mills.

The Manufacturing Co. and the Huguley Co. appealed from this decree to the Circuit Court of Appeals, and the decree was reversed. A second sale of the property was ordered, and an account of the rents and profits during the occupation under the first sale. A second appeal was taken by these respondents and the decree affirmed. A second sale of the property was had and it was pur-

chased in behalf of the bondholders. On October 15, 1898, a decree for a conveyance under this sale was entered, the property was conveyed to the petitioner, and all the purchase money was paid into court. From the last mentioned decree these respondents again appealed to Circuit Court of Appeals: that court affirmed the decree; the respondents then appealed to this Court and also filed a petition for *certiorari*. This petition was denied on October 30, 1901, and the appeal was dismissed on February 24, 1902.

While the petition for *certiorari* and the appeal to this Court above referred to were still pending, the respondents, on May 2, 1901, filed a bill in the Chancery Court of Alabama against the present petitioner and others, alleging in substance that the Manufacturing Co. plaintiff in that suit and the Huguley Co. plaintiff in that suit was each a corporation organized under the laws of Alabama; that the corporations thus purporting to bring that suit were not parties to the original foreclosure suit, and that the proceedings in the original foreclosure suit were invalid because all of the mortgaged property was situated in Alabama. The bill sought to establish a right to redeem the mortgaged property and an account of rents and profits (Record, p. 610).

This petitioner and the other defendants in the suit brought in Alabama filed an answer, demurrer, pleas, and motion to dismiss, setting up the validity of the proceedings in the foreclosure suit (Record, p. 634), and on June 10, 1901, this petitioner filed in the Circuit Court for the Northern District of Georgia an ancillary bill against the Manufacturing Co. and Huguley Co. alleging that each was

a corporation organized under the laws of Georgia, or if either was organized under the laws of Alabama, that it had been joined as a defendant in the original foreclosure suit and had admitted itself to be organized under the laws of Georgia, and that all the business of each had always been carried on in Georgia. The bill, which also named as defendants the solicitors who had represented the respondents in the foreclosure suit, and were representing them in the Alabama suit, sought an injunction against the further prosecution of the suit in Alabama (Record, p. 597).

On this ancillary bill an order of notice to show cause why a preliminary injunction should not be granted was issued. All the respondents named in the bill filed an "Answer to Bill and Response to Rule to Show Cause," without entering any special appearance or otherwise limiting their appearance, in which they set up substantially the same facts relied on in the Alabama suit, and asked that the bill be dismissed for want of jurisdiction of the persons of the defendants and of the subject-matter (Record, p. 629).

The Circuit Court for the Northern District of Georgia granted a preliminary injunction as prayed for in the bill. The respondents asked leave to file a petition in this Court for a writ of prohibition. Leave was denied and at the same time the appeal to this Court in the original foreclosure suit was dismissed. The ancillary bill was then heard upon the bill and proceedings ancillary to the proceedings in the foreclosure suit, and upon the record in the latter suit, and a final decree was entered, granting a permanent injunction (Record, p. 665).

From this final decree an appeal was taken by the

respondents to the Circuit Court of Appeals assigning as errors in various forms: want of jurisdiction of the subject-matter because the bill was not ancillary and did not purport to be between citizens of different States, want of jurisdiction of the persons of the respondents, violation of Section 720 of the Revised Statutes by enjoining a suit in a state court, want of evidence to support the decree, want of equity, want of jurisdiction of the Circuit Court in the original foreclosure suit to make any decree as to property in Alabama, failure of the decree in the original foreclosure suit to bind the respondent corporations as corporations of Alabama (Record, p. 669).

The Circuit Court of Appeals, Judge Pardee dissenting, ordered the bill to be dismissed for want of jurisdiction on the ground that the Alabama and Georgia Manufacturing Co. and the Huguley Manufacturing Co. organized under the laws of Alabama was each a separate corporation from the corporation of the same name described as organized under the laws of Georgia, and not bound by the decrees in the suit to which the corporations of the same names described as organized under the laws of Georgia were parties.

The proceedings in this litigation up to the present time, so far as reported, are as follows:

Robinson v. *Alabama & G. Mfg. Co.*, 48 Fed. Rep. 12 (1891). Demurrer to original foreclosure bill overruled. Lamar and Newman, JJ.

Ibid., 51 Fed. Rep. 268 (1892). Demurrer to application for allowance of counsel fees sustained. Newman, J.

Alabama & G. Mfg. Co. v. *Robinson*, 56 Fed. Rep. 690 (1893). First decree for foreclosure and sale reversed. Pardee, McCormick, and Toulmin, JJ.

Robinson v. *Alabama & G. Mfg. Co.*, 67 Fed. Rep. 189 (1894). Decree for restitution and for a second foreclosure. Newman, J.

Alabama & G. Mfg. Co. v. *Robinson*, 72 Fed Rep. 708 (1896). Decree as to restitution and for second foreclosure affirmed. Pardee, McCormick, and Boarman, JJ.

Robinson v. *Alabama & G. Mfg. Co.*, 89 Fed. Rep. 218 (1898). Decree on account for rents and profits and application thereof to deficiency in proceeds of mortgage. Newman, J.

Huguley Mfg. Co. v. *Galeton Cotton Mills*, 94 Fed. Rep. 269 (1899). Decree as to rents and profits, etc. affirmed. Pardee, McCormick, and Shelby, JJ.

Ibid., 175 U. S. 726 (1899). Petition for writ of *certiorari* denied.

Riverdale Cotton Mills v. *Alabama & G. Mfg. Co.*, 111 Fed. Rep. 431 (1901). Preliminary injunction restraining prosecution of suit in Alabama granted. Newman, J.

Huguley Mfg. Co. v. *Galeton Cotton Mills*, 184 U. S. 290 (1902). Appeal from final decree dismissed.

In re The Huguley Mfg. Co., 184 U. S. 297 (1902). Leave to file petition for prohibition against taking jurisdiction of ancillary bill denied.

The petitioner submits that the Circuit Court of Appeals erred in ordering that the bill be dismissed for want of jurisdiction in the Circuit Court, because:

(1) The Alabama and Georgia Manufacturing Co., if organized under the laws both of Alabama and Georgia, was bound as to its organization in both States by the decree entered in the Circuit Court for the Northern District of Georgia against it as a corporation of Georgia.

(2) The Huguley Manufacturing Co., if organized under the laws of Alabama alone or of both Georgia and

Alabama, was bound as a corporation of Alabama by the decree entered in the Circuit Court for the Northern District of Georgia against it as a corporation of Georgia.

(3) The Circuit Court for the Northern District of Georgia had jurisdiction to and did effectually foreclose the mortgage to Robinson and others by its decree in a suit to which all persons interested in the equity of redemption were parties, by which decree those persons were bound.

(4) The bill filed by the petitioner in the Circuit Court for the Northern District of Georgia was an ancillary bill and within the jurisdiction of that Court.

(5) The provision of Section 720 of the Revised Statutes was not applicable because the bill was ancillary.

(6) The Circuit Court for the Northern District of Georgia had jurisdiction of the persons of the respondents as well as of the subject-matter of the suit.

ARGUMENT

I.

If a corporation organized under the laws of two States is sued as a corporation of one of those States the judgment or decree is binding upon it as a corporation of the other State.

1. A corporation organized under the laws of two States is a single corporation as to its acts, obligations, and liabilities.

A corporation created by charters from two separate States, each constituting the same individuals a corporation under the same name and with same powers, has, for purposes of transacting business, only one existence. For

special purposes it may be important to distinguish between the entity created by the laws of one State and that created by the laws of the other. For all purposes of corporate action and liability the distinction does not exist.

In *Graham* v. *Boston, Hartford & Erie R. R. Co.*, 118 U. S. 161, this Court held that a corporation organized under the laws of Massachusetts, Rhode Island, Connecticut, and New York was so far a single corporation that a meeting of stockholders held in any one of those States pursuant to its laws was a valid meeting and could authorize a mortgage of the property in all the States.

Mr. Justice Blatchford, delivering the opinion of the Court, said:

> "The Boston, Hartford and Erie Company, therefore, though made up of distinct corporations, chartered by the legislatures of different States, had a capital stock which was a unit, and only one set of shareholders, who had an interest, by virtue of their ownership of shares of such stock, in all of its property everywhere. In its organization and action, and the practical management of its property, it was one corporation, having one board of directors, though, in its relations to any State, it was a separate corporation, governed by the laws of that State as to its property therein. It, therefore, had a domicil in each State, and the corporators or shareholders could, in the absence of any statutory provision to the contrary, hold meetings and transact corporate business in any one State, so as to bind the corporation in respect to to its property everywhere. *Bridge Co.* v. *Mayer*, 31 Ohio St. 317; Pierce on Railroads, 20." 118 U. S. 169, 170.

In like manner this Court held as to the same corporation that an act done in Rhode Island, authorized by the Rhode Island charter, was not an unlawful disposition of the corporate funds merely because the Connecticut charter granted no authority.

Clark v. *Barnard*, 108 U. S. 436.

For the same reason it was held by the Circuit Court for the District of Connecticut that for purposes of bankruptcy such a corporation was but a single body, and that an adjudication on a petition in bankruptcy against the Boston, Hartford & Erie R. R. Co. filed in Massachusetts, having priority in time over the adjudication on a petition filed in Connecticut, the latter petition should be dismissed.

In re Boston, Hartford & Erie R. R. Co., 9 Blatch. 101.

The acts and neglects of such a corporation are the acts and neglects of the composite body, binding upon it and enforceable in any jurisdiction in which it may be found, whether there recognized as a corporation of the one State or of the other.

Horne v. *Boston & Maine R. R. Co.*, 18 Fed. Rep. 50.

Fitzgerald v. *Missouri Pacific Ry. Co.*, 45 Fed. Rep. 812, 816.

If such a corporation is sued in one of the States by which it is created, a judgment or decree rendered against it is necessarily binding upon it as a whole. Any other result would lead to indescribable confusion, of which indeed the present case is an instance.

If the corporation for the enforcement of its liabilities were regarded as severable, then an obligation binding upon both the fictitious entities could be enforced only by bringing separate suits in separate jurisdictions, and these suits might result in as many separate and inconsistent verdicts and judgments.

The Courts have recognized these difficulties and have uniformly said that while the distinction between the corporate entities must for some purposes be observed, it was a fiction not applicable to the question of the binding force of the corporate obligations.

In *Uphoff* v. *C. St. L. & N. O. R. R. Co.*, 5 Fed. Rep. 545, the Court clearly intimated that a judgment against a so-called "interstate" corporation was binding upon it as a whole.

In *Horne* v. *B. & M. R. R. Co.*, 18 Fed. Rep. 50, 52, Judge Lowell said:

> "I will only add that the fiction which makes two or three corporations out of what is, in fact, one is established only for the purpose of giving each State its legitimate control over the charters which it grants, and that the acts and neglects of the corporation are done by it as a whole. It is immaterial in considering the question of jurisdiction, that the damage complained of was suffered within the limits of Massachusetts, and that the judgment will bind the corporation in that State."

In *Nashua & L. R. R. Co.* v. *Boston & L. R. R. Co.*, 19 Fed. Rep. 804, the Court said that in the case of such a consolidated corporation each of the entities, when properly sued, represented all.

In *Burger* v. *Grand Rapids & I. R. R. Co.*, 22 Fed. Rep. 561, 564, the Court said that a judgment against the corporation described as organized under the laws of one of the States creating it would be binding and enforceable against it as a corporation of the other.

Where a corporation was organized in both New York and Pennsylvania, it was held that a judgment recovered against it in the former State as a corporation of that State could be sued upon in the latter in an action against it as a corporation of the latter and could not be collaterally impeached.

Union Trust Co. v. *Rochester & P. R. R. Co.*, 29 Fed. Rep. 609.

This Court has never actually passed upon the question now under discussion, but the principle was involved in *Nashua & L. R. R. Co.* v. *Boston & L. R. R. Co.*, 136 U. S. 356. In that case the plaintiff corporation was organized in New Hampshire. Later an identical corporation was created in Massachusetts; and still later a statute was passed in Massachusetts apparently intended to effect complete consolidation, and two months after an act was passed in New Hampshire authorizing such a union. The corporation brought suit in the Circuit Court in Massachusetts describing itself as a corporation organized under the laws of New Hampshire for an accounting under a contract between the consolidated or "interstate" corporation and the defendant. Objection was taken to the jurisdiction on the ground that the corporation was also organized in Massachusetts, and to the merits on the ground among others that, if the suit was maintainable, the Massachusetts corporation was a necessary party (136 U. S. 362).

This Court held that the Circuit Court had jurisdiction, and also decided for the plaintiff on the merits, thus repudiating the argument that for purposes of enforcing the obligation or obtaining a final and binding adjudication there was a second corporate entity that must be made a party.

2. The cases as to the jurisdiction of the Federal Courts depend upon a wholly distinct question from that here under consideration.

Much reliance has been put by the respondents, and apparently by the judges of the Circuit Court of Appeals, on the decisions of this Court relating to federal jurisdiction of suits by or against so-called interstate corporations. Those cases have no bearing on the present question.

This Court early recognized that a corporation might exist equally under the laws of each of several States, although for purposes of actually transacting business there was only one body.

Distinguishing between cases where there has been an actual incorporation in more than one State, and cases in which a corporation of one State has been granted authority to operate in another, even though coupled with a statutory declaration that by so doing it became a domestic corporation of the State granting such authority, this Court has held that in the latter class of cases the corporation was everywhere and for all purposes a corporation of the State granting the original charter.

Martin's Adm. v. *B. & O. R. R. Co.*, 151 U. S. 673.

St. J. & Gr. I. R. R. Co. v. *Steele*, 167 U. S. 659.

St. L. & St. F. R. R. Co. v. *James*, 161 U. S. 545.
L. N. O. & C. R. R. Co. v. *Louisville Tr. Co.*, 174 U. S. 552.
Southern Ry. Co. v. *Allison*, 190 U. S. 326.

And that in the former class of cases, where there were really two incorporations, the corporation was for jurisdictional purposes to be deemed a corporation of that one of the chartering States in which it was sued.

Railway Co. v. *Whitton*, 13 Wall. 270.
Memphis & C. R. R. Co. v. *Alabama*, 107 U. S. 581.
See also *Goodlett* v. *Louisville & N. R. R. Co.*, 122 U. S. 391.

A corporation created by the laws of a State is deemed a citizen of that State for purposes of jurisdiction by a legal fiction according to which all its stockholders are conclusively presumed to be citizens of that State. If the same persons have been created a corporation by the laws of two States, and two entities are to be recognized at the same time, this fiction would involve conclusively presuming that the same persons were citizens of each of two States. Some rule is necessary to avoid this anomaly. The requirement is met by recognizing, for purposes of jurisdiction, two separate entities, but refusing to recognize more than one of the two in any one proceeding. To secure a proper distribution of jurisdiction [illegible]een the States which have created the corporation [illegible] proper control by each State over the charter it has granted, in a proceeding against the corporation in either State, only the entity created by that State is recognized.

See *Horne* v. *B. & M. R. R. Co.*, 18 Fed. Rep. 50.
Goodwin v. *N. Y. N. H. & H. R. R. Co.*, 124 Fed. Rep. 358.

If the fiction of distinct entities be carried beyond the determination of questions of federal jurisdiction, then it is difficult to see how an "interstate" corporation can ever be bound by the judgment or decree in any one suit. To accomplish that result, it would have to be sued in its several capacities in one proceeding in one State. Service could only be made by serving the officers in that State who were in fact officers of the corporation created by that State. If such service is conclusively deemed service upon the several corporate entities, and if all can be joined in a suit in one State, there remains nothing of the theory of separate entities except the description of the corporation in the process, not even a limitation of federal jurisdiction, for this Court has held that the incorporation elsewhere does not limit that jurisdiction. If the suit cannot be so maintained, then all the entities can be bound only by bringing a separate suit against each.

II.

When a final decree or judgment has been rendered in a Circuit Court of the United States against a corporation there described as organized under the laws of a given State, and the corporation has admitted the truth of that allegation, the judgment or decree cannot be collaterally impeached on the ground that the allegation of citizenship was untrue.

The courts of the United States are of limited jurisdiction, but they are not inferior courts, and where a final judgment or decree has actually been entered, all presumptions are to be made in favor of jurisdiction. If the jurisdiction is not shown upon the record, but a final decree or judgment is none the less rendered, that decree or judgment may be reversed on error or appeal, but cannot be collaterally attacked.

M'Cormick v. *Sullivant*, 10 Wheat. 192.
Ex parte Tobias Watkins, 3 Peters, 193, 207.
Cutler v. *Huston*, 158 U. S. 423.

In like manner, if a suit is removed to the Circuit Court the final judgment or decree, if unreversed, is valid and binding, although the facts justifying removal are not alleged in the record, and even though it is made to appear affirmatively that there was not a right to remove.

Des Moines N. & R. R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552.
Dowell v. *Applegate*, 152 U. S. 327.
Evers v. *Watson*, 156 U. S. 527.

In *Des Moines N. & R. R. Co.* v. *Iowa Homestead Co.* a bill in equity was brought in a state court in Iowa to recover certain taxes. The defendant relied upon a final decree in a suit between the same parties and others brought in a state court and removed by the defendants therein to the Circuit Court. The plaintiff contended that this decree was invalid because it appeared that some of the defendants, including the present defendant, were citizens of the same State as the plaintiff there and here.

This Court, on writ of error to the Supreme Court of Iowa, held that the former decree was valid. This Court said:

> "It is said, however, that these decisions apply only to cases where the record simply fails to show jurisdiction. Here it is claimed that the record shows there could be no jurisdiction, because it appears affirmatively that the Navigation and Railroad Company, one of the defendants, was a citizen of the same State with the plaintiff. But the record shows, with equal distinctness, that all the parties were actually before the court, and made no objection to its jurisdiction. . . . Whether in such a case the suit could be removed was a question for the Circuit Court to decide when it was called on to take jurisdiction. If it kept the case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity." 123 U. S. 558, 559.

Where the record on its face shows jurisdiction in the Circuit Court, and all the parties to the suit have acquiesced in the allegations showing jurisdiction, and in the assumption of jurisdiction by the Court, the case is much stronger. To allow a defendant under such circumstances to controvert collaterally the existence of the facts is not only to permit him to attack collaterally the judgment or decree, but to permit him to do this after he has expressly admitted the existence of the necessary facts and thus led the Court to assume and exercise the jurisdiction which he now seeks to deny.

This Court has held that where the record states facts necessary to give jurisdiction which are not denied, the final decree cannot be attacked collaterally, though it is alleged that the statement of those facts was false and made only for the purpose of bringing the suit in the Circuit Court.

Lacassagne v. *Chapuis*, 144 U. S. 119.

In this case a suit had been brought by one alleging herself to be an alien to establish a right to land against a citizen of Louisiana, and the plaintiff obtained a decree. Subsequently a suit was there brought against the executor of the former plaintiff by persons not parties to the former suit, claiming as mortgagees of the former defendant to recover the property on the ground, among others, that the decree in the first suit was void because the plaintiff therein was in fact a citizen of Louisiana so that the Circuit Court had no jurisdiction.

This Court said:

> "As to the allegation in the bill that the court was without jurisdiction of the suit brought by the widow Cavé, because she alleged falsely therein that she was a citizen of France, when in fact she was a citizen of Louisiana, and thus the court had no jurisdiction of the suit as between her and Marceline Cavailhez, that question cannot be raised and adjudicated in this suit. By the record of the former suit, there appeared to be jurisdiction, and the plaintiff cannot question it by means of this suit, when the question is not raised by Marceline Cavailhez, who was the defendant in the former suit." 144 U. S. 126.

In the original proceedings giving rise to the case to review which the present petition is brought, the Huguley Manufacturing Co. was sued under the description of a corporation organized under the laws of Georgia, and appeared and admitted the allegation. If the corporation in fact existed under the laws of Alabama, there was a misdescription in the nature of a misnomer, but the identity of the corporation appears on the record, and that corporation cannot now consistently with the principles laid down in the authorities cited assert that all the proceedings were void as to it, when by its own admission the Court was led to take jurisdiction. It is clear from the decisions that no principle of law renders the final decree of the Circuit Court for the Northern District of Georgia in the original foreclosure suit a nullity for want of jurisdiction. It is equally clear that the respondent has by its acts estopped itself from asserting facts impeaching the jurisdiction, since it has deliberately admitted a fact, peculiarly in its own knowledge, the truth of which establishes the existence of that jurisdiction.

If an estoppel can ever be created, it must arise against one who for ten years has allowed a litigation to continue, involving three appeals to the Circuit Court of Appeals and an appeal to this Court, and at the end of that litigation seeks to avoid the result by denying an allegation admitted at the outset and never questioned throughout the proceedings.

III.

A Circuit Court of the United States may foreclose a mortgage which covers land partly in one State and partly in another if it has personal jurisdiction over the mortgagor and all persons interested.

This Court decided in *Muller* v. *Dows*, 94 U. S. 444, that a Circuit Court of the United States sitting in one State might decree a foreclosure of a mortgage covering property partly in that State and partly in an adjoining State, if it had all the interested parties before it. The decision was put upon the obvious necessity for some means of foreclosing such mortgages, and upon the control of the court over the property, though part of it was without its territorial jurisdiction, by reason of the presence before the court of all persons interested and its power to compel such acts to be done by them as might be required to effectuate the result.

The jurisdiction thus established has since been freely exercised by the Circuit Courts.

Boston Safe Deposit & Trust Co. v. *Bankers & M. Tel. Co.*, 36 Fed. Rep. 288.

Ford v. *Delta & Pine Land Co.*, 43 Fed. Rep. 181.

Woodbury v. *Allegheny & K. R. R. Co.*, 72 Fed. Rep. 371.

International B. & T. Co. v. *Holland Tr. Co.*, 81 Fed. Rep. 422.

In *Central Trust Co.* v. *Wabash, St. L. & P. Ry. Co.*, 29 Fed. Rep. 618, Mr. Justice Brewer, speaking of the foreclosure of a mortgage covering the entire Wabash Railroad system which extended into several States, said:

"Of the propriety of a foreclosure in one Court operating upon the entire property running through several States, and of the validity of a sale made in pursuance of that foreclosure, and the completeness of the title which will pass by such sale, there can be now no longer a question. In the case of *Muller* v. *Dows*, 94 U. S. 444, that question was put at rest." p. 620.

In *Farmers L. & T. Co.* v. *Chicago & Atlantic Ry. Co.*, 27 Fed. Rep. 146, 148, Judge Gresham assumed that a decree might be entered in one circuit foreclosing as an entirety a mortgage covering a railroad extending into several States.

It has sometimes apparently been erroneously supposed that the decision of this Court in *Muller* v. *Dows* depended wholly upon the decree requiring a deed to be executed by the mortgagor or the trustee or both. By the decree appealed from in that case:

> "The court decreed a sale of the entire property covered by the mortgage, and directed the master, who was ordered to make the sale, to execute a good and sufficient deed or deeds to the purchaser. It also declared that after the sale both the defendant corporations and the complainants' trustees named in the mortgage, as well as all persons claiming under them or either of them, be barred and foreclosed from all interest, estate, right, claim, or equity of redemption of, in, and to the property, reserving, however, the rights of the holders of the bonds and coupons secured by the first mortgage, then remaining outstanding and unpaid. It directed that the two defendant corporations should surrender to the purchaser the property sold and conveyed, upon the execution,

approval, and delivery of the master's deed; and that, as further assurance, the Chicago and South-western Railway Co. should, on the approval and delivery of the master's deed, convey all the property therein described to the purchaser, by their good and sufficient deed." 94 U. S. 448.

Comparing the case and this decree with a Pennsylvania case cited in support, this Court said:

> "The mortgagors here were within the jurisdiction of the court. So were the trustees of the mortgage. It was at the instance of the latter the master was ordered to make the sale. The court might have ordered the trustees to make it. The mortgagors who were foreclosed were enjoined against claiming property after the master's sale, and directed to make a deed to the purchaser in further assurance. And the court can direct the trustees to make a deed to the purchaser in confirmation of the sale. We cannot, therefore, declare void the decree which was made." 94 U. S. 450.

The Court did not, as will be noticed, rely upon the execution of any deed by the trustee, for none had been executed; and it dealt with the deed from the mortgagor as "in further assurance."

There is no force in the suggestion that a decree ordering a sale and conveyance by a master in a suit in which the only persons in whom title could be vested were before the Court fails of effect because it does not require those persons actually to execute a deed. It would obviously be within the power of the Court to appoint a master to execute such a deed in behalf of either of these parties to the suit, if either should be required to do so and should

refuse. Such a course was followed in the suit out of which grew the case of *Root* v. *Woolworth*, 150 U. S. 401 (see statements of facts in that case, 150 U. S. at p. 402).

A master appointed to make a sale where the Court has all the parties before it may certainly be given by the Court all the powers that the Court could require the parties before it to confer on the master to enable him to execute the decree. To require the mortgagor to execute a deed is therefore unnecessary, and only as this Court said, "in further assurance."

One further consideration is decisive of the question as far as the present case is concerned. The decree of foreclosure now in question, as is usual, provided that the equity of redemption should be thereby foreclosed as against the mortgagor and all persons claiming under it since the date of the trust deed (Record, vol. 2, p. 280). This decree the Court could certainly make as against the defendants personally; and one taking title under the sale ordered and made pursuant to the decree can certainly invoke the enforcement by the Court of this part of the decree as a protection.

The Circuit Court for the Northern District of Georgia, according to *Muller* v. *Dows*, unquestionably had jurisdiction to foreclose the mortgage; on any theory of that case it could have made a decree that would have carried a clear title to property in Alabama as well as to property in Georgia, for it could have ordered conveyances by all the respondents. Assuming that the title conveyed by the master is imperfect without such confirmatory deeds, yet as the Court has decreed the equity of redemption to be foreclosed it can, as against persons bound personally by

that decree, as are the respondents here, and should protect the purchaser from adverse claims under the equity of redemption.

IV.

A Circuit Court of the United States may entertain as ancillary to a suit in which it has rendered a final decree, a bill brought to restrain proceedings in another Court by persons bound by its decree to impeach on grounds already or that might have been adjudicated a title based upon that decree.

Any suit that is brought in order to protect or give effect to a judgment or decree already rendered by the same court in a suit between the same parties or their juries, or which grows out of such former suit is, an ancillary proceeding.

Dunn v. *Clarke*, 8 Peters, 1.
Johnson v. *Christian*, 125 U. S. 642.
Minnesota Co. v. *St. Paul Co.*, 2 Wall. 609.
Carey v. *Houston & T. C. Ry. Co.*, 161 U. S. 115.

A Circuit Court of the United States can take jurisdiction of such a proceeding by virtue of its jurisdiction over the original suit. *Pacific R. R. of Mo.* v. *Mo. Pac. Ry. Co.*, 111 U. S. 505.

> "The bill though an original bill in the chancery sense of the word, is a continuation of the former suit on the question of the jurisdiction of the Circuit Court." 111 U. S. 522.

Under these principles a Circuit Court of the United States can by appropriate proceedings enforce and protect its

judgments and decrees. Its jurisdiction having once attached to the original subject-matter, it may entertain such further proceedings as are proper to give full effect to that jurisdiction, and all such proceedings are deemed to be ancillary.

It is not necessary that the original suit should still be pending in the Circuit Court when an ancillary bill is filed, or that the plaintiff in the ancillary bill should have been a party to the original suit, if he claims in privity under such a party.

In *Root* v. *Woolworth*, 150 U. S. 401, the plaintiff filed his bill in the Circuit Court to restrain the defendant from asserting a title which many years before in a suit brought in the same court by the plaintiff's predecessor in estate against the defendant had been set up by the defendant and adjudged invalid. This Court held that the bill could be maintained, although both parties were citizens of Nebraska, and although it was brought to recover real estate of which the plaintiff was not in possession, because it was ancillary to the former suit of which the Circuit Court had jurisdiction. Mr. Justice Jackson, delivering the opinion of the court, said:

> "It is well settled that a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments which remain unreversed, when the subject-matter and the parties are the same in both proceedings." 150 U. S. 410, 411.

And again,

> "The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or

writs of assistance in order to avoid the relitigation of questions once settled between the same parties, is well settled." 150 U. S. 411, 412.

On the right of one not a party to the original suit to maintain such a proceeding, the Court said:

"Under this principle Morton could undoubtedly have brought the bill to carry into effect the decree rendered in his favor against Root, and it is equally clear that his assignee, or privy in estate, has a right to the same relief that Morton could has asserted." 150 U. S. 411.

This jurisdiction extends as well to the acts of a person in bringing and maintaining a conflicting suit in another court as to acts *in pais*.

French v. *Hay*, 22 Wall. 250.

In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, a state court retained jurisdiction of an action of replevin removed to the Circuit Court of the United States, and upon final judgment for the defendant in the state court an action was brought by him against the plaintiff on the replevin bond. The plaintiff in replevin thereupon brought a bill in the Circuit Court to restrain the action on the replevin bond. This Court held that the bill could be maintained, and said:

"The bill in this case was, therefore, ancillary to the replevin suit, and was in substance a proceeding in the Federal Court to enforce its own judgment by preventing the defeated party from wresting the replevied property from the plaintiffs in replevin, who, by the judgment of the court, were entitled to it, or

> what was in effect the same thing, preventing them from enforcing a bond for the return of the property to them." 103 U. S. 497.

The proceedings set forth in the present petition are clearly within these authorities. The petitioner, while not a party to the original suit, claims title in privity with the plaintiff in that suit by purchase under a decree of the court. The original purchaser in the foreclosure sale could have become a party upon application in order to protect his interests.

Blossom v. *Milwaukee & C. R. R. Co.*, 1 Wall. 655.
Kneeland v. *American L. & T. Co.*, 136 U. S. 89.

The petitioner to whom the title under the decree has passed, can, as assignee, ask like protection of the court. The basis of the suit brought by the petitioner was that the defendants in the original suit, under the decree in which the plaintiff claimed title, had taken proceedings in another court to contest the validity of the decree rendered against them in the Circuit Court. In this particular the case was precisely like *Root* v. *Woolworth*, 150 U. S. 401, except that there the defendant had taken actual possession of the property in dispute instead of bringing a suit in another court.

The present petitioner would have been entitled as in *Root* v. *Woolworth*, 150 U. S. 401, to bring an ancillary bill even if this original suit had been terminated. In fact, it may be observed, the original suit was still pending, for the defendants, the present respondents, had claimed an appeal to this court which was not disposed of until February 24, 1902. See *Huguley Manufacturing Co.* v. *Galeton Cotton*

Mills, 184 U. S. 290. This was more than seven months after the ancillary bill was filled, and Judge Newman in granting a preliminary injunction expressly referred to the pending of the appeal as one ground for taking jurisdiction. See *Riverdale Cotton Mills* v. *Alabama & Georgia Manufacturing Co.*, 111 Fed. Rep. 431.

V.

The statutes of the United States do not prevent a Circuit Court in an ancillary proceeding from granting an injunction to restrain proceedings in a State Court to defeat a decree of the Circuit Court.

Section 720 of the Revised Statutes, reënacting the Act of March 2, 1793, provides that:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This act has always been construed as not applicable to cases in which a court of the United States has first acquired jurisdiction, and the injunction is asked for to enable it fully to exercise such jurisdiction. Whenever therefore an injunction is asked for by a bill which is ancillary to a suit or controversy of which the federal court first acquired jurisdiction, the issue of the injunction is not within the prohibition of this provision of the Revised Statutes.

In *French* v. *Hay*, 22 Wall. 250, a suit was brought in a

state court of Virginia and a decree rendered for the plaintiff. The defendant in that suit then removed the case to the Circuit Court of the United States. Before the removal was actually effected, the plaintiff obtained a transcript of the decree and brought an action on it in Pennsylvania. After the removal the defendant in the Pennsylvania suit filed a bill in the Circuit Court to which he had removed the original suit asking an injunction against the further prosecution of the action in Pennsylvania. A preliminary injunction was granted which, upon the Circuit Court entering a final decree in the suit first brought, was made permanent.

Mr. Justice Swayne, delivering the opinion of this Court, said:

> "The prohibition in the Judiciary Act against the granting of injunctions by the courts of the United States touching proceedings in state courts has no application here. The prior jurisdiction of the court below took the case out of the operation of that provision." 22 Wall. 253.

In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, already referred to, the Circuit Court in like manner granted an injunction against further proceedings in a state court which were inconsistent with the exercise by the Circuit Court of a jurisdiction already acquired. Disposing of the objection that the statute forbade the issue of an injunction, this Court said:

> "A court of the United States is not prevented from enforcing its own judgments by the statute which forbids it to grant a writ of injunction to stay proceedings in a state court. Dietzsch, the original plaintiff

in the action on the replevin bond, represented the real parties in interest, and he was a party to the action of replevin, which had been pending, and was finally determined in the United States Circuit Court. That court had jurisdiction of his person, and could enforce its judgment in the replevin suit against him, or those whom he represented, their agents and attorneys. The bill in this case was filed for that purpose and that only."

And again:

"As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law, and the court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by a direct proceeding. These views are sustained by the case of *French, Trustee*, v. *Hay* (22 Wall. 250), between which and this case there is no substantial difference." 103 U. S. 497, 498.

The foregoing cases were approved in *Moran* v. *Sturges*, 154 U. S. 256, 269, *et seq.*

In *Bowdoin College* v. *Merritt*, 59 Fed. Rep. 6, a bill was brought in the Circuit Court to remove a cloud upon title. Pending the suit a person not properly a party, but deemed by the Court to have submitted to the jurisdiction, brought an action in a state court setting up a claim on substantially the same grounds as those asserted by the defendants in the Circuit Court. On application the plaintiff in the Circuit Court was allowed to file a supplemental bill making the plaintiff in the state court a defendant, and enjoin-

ing further proceedings in the state court. Mr. Justice McKenna, then the Circuit Judge, upheld the right to an injunction on the ground that the federal court had first acquired jurisdiction of the controversy.

See also *Sharon* v. *Terry*, 36 Fed. Rep. 337, 365, per Field, J.

Central Tr. Co. v. *Western N. C. R. R. Co.*, 89 Fed. Rep. 24.

State Tr. Co. v. *Kansas City P. & G. R. R. Co.*, 110 Fed. Rep. 10.

Central Tr. Co. v. *Western N. C. R. R. Co.*, 112 Fed. Rep. 471.

Stewart v. *Wisconsin Central Ry. Co.*, 117 Fed. Rep. 782.

The test by which the application of Section 720 of the Revised Statutes is to be determined is the same as the test of federal jurisdiction. If the proceeding in which an injunction is sought is in fact ancillary, so that the court is authorized to take jurisdiction for that reason alone, although there is not the requisite diversity of citizenship, then the provision of the Revised Statutes does not apply, because the injunction is incidental or ancillary to the exercise of its jurisdiction by the Circuit Court, and an injunction may be granted.

In the present case the bill seeking an injunction was filed to restrain a proceeding in the state court by which it was sought to annul the decree of the Circuit Court under which the foreclosure sale was had and under which the petitioner claimed title. The original foreclosure suit was still pending in the Circuit Court awaiting the decision of this Court upon an appeal. If the appeal was dismissed

leaving the final decree of the Circuit Court unreversed, as in fact happened, then the proceeding in the state court, if successful, would defeat and was solely intended to defeat the operation of that decree. A stronger case for an ancillary bill and for restraining proceedings in the state court to enable the Circuit Court to exercise its jurisdiction over a subject-matter to which that jurisdiction had long before attached cannot well be imagined.

VI.

The Circuit Court of Appeals erred in dismissing the bill for want of jurisdiction.

We have already shown that the original decree of foreclosure was binding upon the Alabama and Georgia Manufacturing Co. both as a corporation of Georgia and of Alabama, and was binding upon the Huguley Manufacturing Co., that the sale under the decree was valid as to all the land sold, that the bill filed by this petitioner was an ancillary bill and therefore properly within the jurisdiction of the Circuit Court regardless of any diversity of citizenship, and that the Circuit Court was not prevented by Section 720 of the Revised Statutes from granting the injunction prayed for. So far then as the subject-matter of the suit was concerned there was no want of jurisdiction in the Circuit Court.

It is equally true that there was no want of jurisdiction over the persons of the defendants.

In response to the order of notice the respondent corporations filed an "Answer to Bill and Response to Rule to

Show Cause," which reads, "Comes the Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co., each a corporation under the laws of Alabama, John M. Chilton, Welles, Bennett, & Welles, a partnership, and for answer to an order of this Court, . . . says." Nowhere in this answer is there any limitation upon the appearance for the respondents, and nowhere is there even an allegation of want of jurisdiction by any failure to serve process. The only suggestion of a want of personal jurisdiction is in the prayer that the Court "dismiss said bill for want of jurisdiction of the persons and subject-matter of said proceedings." This answer constituted a general appearance dispensing with the need of any service of process.

Fitzgerald Construction Co. v. *Fitzgerald*, 137 U. S. 98, 105, 106.

The case was one in which substituted service was proper, since it was an ancillary bill.

Pike v. *Gregory*, 94 Fed. Rep. 373.

Had not the respondents appeared generally, an order for such substituted service would no doubt have been made.

The Circuit Court of Appeals did not proceed on any want of service in the ancillary bill, but on the ground that the Circuit Court for the Northern District of Georgia had no jurisdiction to entertain the proceeding. This conclusion was apparently based upon the theory that the Alabama and Georgia Manufacturing Co., as a corporation of Alabama, and Huguley Manufacturing Co., because a corporation of Alabama and not of Georgia, were not

parties to the original foreclosure suit, were not bound by the decree in that suit, and could claim a source of title independent of that claimed by the corporations of the same name which were parties to that suit; and therefore that the petitioner's bill was not ancillary. But if, as we have sought to show, the Alabama and Georgia Manufacturing Co. was properly sued in the Northern District of Georgia as a corporation of Georgia, and the decree rendered against it was binding upon the corporation everywhere, under however many different States it might be chartered, and if the Huguley Manufacturing Co., by permitting itself to be sued as a corporation of Georgia, barred itself from afterwards impeaching the decree on the ground that it was a citizen of Alabama, then the whole foundation for the opinion of the majority of the Circuit Court of Appeals fails.

In conclusion we submit that the question of the status of a corporation organized under the laws of two or more States, but known and existing for all practical purposes of doing business only as a single body, and of the effect of a judgment or decree against such a corporation with reference to its binding force, is one of such serious importance and of such public interest as to warrant this Court in exercising its power to review by *certiorari* a decision of the Circuit Court of Appeals directly involving that question. We further submit that this Court should, in its discretion, grant the writ in order to review a decision the result of which will be to reopen a litigation that was begun thirteen years ago, in the course of which there have been three appeals, two unsuccessful, by the respondents to

the Circuit Court of Appeals, an unsuccessful application to this Court for a writ of *certiorari*, an unsuccessful appeal to this Court, and unsuccessful application to this Court, for a writ of prohibition. The effect of the present decree of the Circuit Court of Appeals is to destroy all the results of the litigation and to leave the present petitioner in a worse position than were his predecessors in interest at the outset. This result is reached only by permitting the respondents now to attack collaterally a jurisdiction to which throughout they have submitted without demur, and to raise now, for the first time, defences which should have been taken thirteen years ago.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 194.

RIVERDALE COTTON MILLS

v.

ALABAMA AND GEORGIA MANUFACTURING CO. ET AL.

BRIEF FOR APPELLANT ON WRIT OF CERTIORARI.

LOUIS D. BRANDEIS,
THOS. H. WATTS,
WILLIAM H. DUNBAR,
Of Counsel for Appellant.

Supreme Court of the United States.

October Term, 1904.
No. 194.

RIVERDALE COTTON MILLS.
vs.
ALABAMA AND GEORGIA MANUFACTURING COMPANY ET AL.

BRIEF FOR APPELLANT ON WRIT OF CERTIORARI.

STATEMENT OF FACTS.

This is a writ of *certiorari* issued on a petition by the Riverdale Cotton Mills, a corporation organized under the laws of Georgia, to review a decree of the Circuit Court of Appeals for the Fifth Circuit dismissing for want of jurisdiction a bill filed by the appellant against the appellees, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, in the Circuit Court for the Northern District of Georgia. The following are briefly the material facts as shown by the record:

The Alabama and Georgia Manufacturing Company (hereinafter for convenience sometimes called the Alabama and Georgia Company) was chartered by special act of the state of Alabama on February 7, 1866 (Rec. p. 531). On March 12, 1866, the same individuals, as incorporators, were chartered under the same name and for the same purposes by the state of Georgia (Rec. p. 529). This corporation acquired and for many years operated a manufacturing plant partly in Alabama and partly in Georgia.

By deed of trust dated January 2, 1884, this corporation mortgaged all its property to three trustees to secure an issue of bonds (Rec. p. 525). Subsequently the Huguley Manufacturing Company (hereinafter for convenience sometimes called the Huguley Company) purchased and acquired all the property in question and at the beginning of the foreclosure suit hereafter referred to was the owner of the property subject to the mortgage (Rec. p. 492).

Default was made in the payment of the interest on the mortgage bonds, and on January 20, 1891, one of the three trustees under the mortgage filed a bill of complaint in the Circuit Court for the Northern District of Georgia against the Alabama and Georgia Company and the Huguley Company, both described as corporations organized under the laws of Georgia, joining as a defendant another of the trustees who was interested in the Huguley Company adversely to the bondholders (Rec. p. 1). The third trustee was then dead. This bill sought a foreclosure of the mortgage. The defendant corporations duly appeared and filed an answer admitting the facts alleged as to their incorporation and citizenship (Rec. p. 14). A decree of foreclosure was entered (Rec. p. 130), a sale was ordered and made, and the property was purchased in behalf of the bondholders and conveyed to the Galeton Cotton Mills (Rec. pp. 149, 313).

The Alabama and Georgia Company and the Huguley Company appealed from this decree to the Circuit Court of Appeals (Rec. p. 154), and the decree was reversed (Rec. p. 321) on the ground that part of the bonds were not due and the court had erroneously ordered a sale unless all were paid. 56 Fed. Rep. 690. The Huguley Company thereupon petitioned (Rec. p. 158) for restitution of the property, alleging ownership thereof subject to the mortgage. Restitution was ordered upon condition (Rec. p. 327), but the condition was not complied with. An account of the amount due on the bonds was then ordered and taken by a master and on confirmation of his report a new decree of foreclosure was entered (Rec. p. 356). From this decree an appeal was taken (Rec. p. 362); the decree was affirmed by the Circuit Court of Appeals on February 25, 1895 (Rec. p. 375), and a second sale of the property was ordered (Rec. p. 383). An account of the rents and profits was ordered before a master (Rec. p. 385). The Huguley Company petitioned for a postponement of the sale pending the accounting (Rec. p. 386); but the postponement of the sale was refused (Rec. p. 389).

A second sale of the property at foreclosure was thereupon had on May 5, 1896, and the property was purchased in behalf of a majority of the bondholders (Rec. p. 390). The sale was confirmed on June 20, 1896, upon petition of the purchaser opposed by the Huguley Company (Rec. pp. 391–396), but no conveyance was made at that time.

On October 27, 1897, the master filed his report as to the rents and profits, to which both parties concerned excepted. On February 28, 1898, the court entered a decree substantially confirming the master's report (Rec. p. 425). Counsel for the Huguley Company then applied to have their fees paid from the proceeds of the sale (Rec. p. 426); the Huguley Company objected to the applica-

tion of the rents and profits received during the time of possession under the first sale and prior to the second sale in reduction of the mortgage debt, on the ground that it was owner of the property and was not liable for the mortgage debt, and asked to have the balance due on the mortgage debt ascertained. The applications were denied (Rec. p. 436).

On September 22, 1898, the purchaser petitioned for a deed (Rec. p. 440). The Huguley Company opposed this petition (Rec. p. 442).

On October 15, 1898, a decree for a conveyance was entered (Rec. p. 445), the Huguley Company moved to set the decree aside (Rec. p. 448), this motion was denied (Rec. p. 451), and the property was conveyed to the petitioner, and all the purchase money was paid into court.

The Huguley Company, William T. Huguley and the Alabama and Georgia Company thereupon again appealed to the Circuit Court of Appeals (Rec. p. 452), assigning as error among other things the application of rents and profits alleged to belong to the Huguley Company in reduction of the mortgage debt (XVIII-XXI Rec. p. 459). None of the fifty-six assignments of error (Rec. pp. 453–470) contains any suggestion of lack of jurisdiction on the part of the court, over the parties or the subject matter, or of lack of power to make an effectual sale.

This appeal was unsuccessful. On May 16, 1899, the Circuit Court of Appeals affirmed the decrees appealed from in all respects. 94 Fed. Rep. 269. Thereupon the Huguley Company filed a petition in this court for a writ of *certiorari* to review the decision of the Circuit Court of Appeals. On October 30, 1901, the petition was denied. 175 U. S. 726. The Huguley Company then claimed an appeal to this court from the decision of the Circuit Court of Appeals. This appeal was on February 24, 1902, dismissed for want of jurisdiction. 184 U. S. 290.

While the petition for *certiorari* and the appeal to this court above referred to were still pending, the appellees on May 2, 1901, filed a bill in the Chancery Court of Alabama against the present appellant and others, alleging in substance that the Alabama and Georgia Company plaintiff in that suit and the Huguley Company plaintiff in that suit was each a corporation organized under the laws of Alabama; that the corporations thus purporting to bring that suit were not parties to the original foreclosure suit, that all of the mortgaged property was in Alabama, and that the proceedings in the original foreclosure suit were invalid for want of jurisdiction and for want of power to decree a sale of the property. The bill sought to establish a right to redeem the mortgaged property and an account of rents and profits. (Rec. p. 486.)

This bill admitted (paragraph second, Rec. 487) that "The Alabama and Georgia Manufacturing Company" (not describing it further) executed the mortgage dated January 2, 1884, on which the foreclosure suit was founded, covering the lands redemption of which was sought. The bill admitted (paragraph fourth, Rec. pp. 487–490) that Robinson the plaintiff in the foreclosure suit brought that suit, that an "Alabama and Georgia Manufacturing Company alleged to be a corporation organized under the laws of Georgia only, and said Huguley Manufacturing Company" were parties defendant to that suit. The bill proceeded to allege that the Alabama and Georgia Company was also incorporated in Alabama, that the Huguley Company was incorporated only in Alabama, and that all of the land was situated in Alabama, an allegation inconsistent with the description in the first paragraph of the bill and in the mortgage, in each of which a part of the land was described as "being in the twentieth (20) district of Harris County, Georgia." The bill recited part of the proceedings in the foreclosure suit and denied the

validity of the foreclosure and sale on the ground that the corporations organized in Alabama were not before the court, and if they had been would have ousted the jurisdiction since the plaintiff was a citizen of Alabama, and on the ground that the Circuit Court for the Northern District of Georgia could not order a foreclosure and sale of land situated in Alabama. The bill renewed the contention made by the Huguley Company in the foreclosure suit, that the rents and profits greatly exceeded the amount as reported by the master, and alleged specifically that the plaintiff the Huguley Company was the owner subject to the mortgage of the mortgaged property (Rec. p. 492). The prayer of this bill was for a decree establishing the right of "your orators as mortgagors" to redeem, and establishing that "said equity of redemption has never been cut off by any of the said judicial proceedings aforesaid" (Rec. pp. 492, 493) for an account and redemption and the appointment of a receiver *pendente lite*.

To this bill the present appellant and the other respondents therein filed an answer, demurrer, plea and motion to dismiss (Rec. p. 510), and on June 10, 1901, this appellant filed in the Circuit Court for the Northern District of Georgia an ancillary bill against the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company and J. M. Chilton and Welles, Bennett and Welles, their attorneys (Rec. p. 473). A subpœna and order to show cause why an injunction should not be granted were ordered and a temporary restraining order against further prosecution of the suit in Alabama (Rec. p. 500).

The ancillary bill filed by this appellant alleged in substance that the Alabama and Georgia Company and the Huguley Company were both corporations organized under the laws of Georgia, but both claimed to be also

organized under the laws of Alabama; that if either was organized in Alabama it had no place of business there, and that the only officers, directors or stockholders of each were the officers, directors and stockholders which it had as organized in Georgia. The bill set forth the proceedings in the foreclosure suit, ending with the appeal taken by the Huguley Company to this court, then still pending, and referred to the record in the foreclosure suit making it a part of the bill (Rec. p. 478). The bill further set forth the filing of the bill in the Alabama court impeaching the foreclosure decree and all other proceedings in that suit, referring to and making a part of the bill (Rec. p. 478) a copy annexed of the bill in the Alabama court. (Rec. p. 486.) The bill prayed for an injunction restraining the Alabama and Georgia Company and the Huguley Company and their attorneys joined as respondents, from further prosecuting their suit in Alabama.

On June 21, 1901, an "Answer to the Bill and Response to the Rule to Show Cause" was filed by the "Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co., each a corporation under the laws of Alabama" and by the attorneys joined as respondents.

This answer (Rec. p. 505) in substance alleged that the Alabama and Georgia Company was incorporated in both Alabama and Georgia, and the Huguley Company in Alabama only, and that the Alabama and Georgia Company by its dual incorporation constituted two distinct entities of which only the Georgia Company was a party to the foreclosure suit. The respondents insisted that the two Alabama corporations plaintiffs in the suit in Alabama were not parties to the foreclosure suit, and that if they were the decree was invalid because in that event the plaintiff and two of the defendants in that suit were citizens of the same state and the court had no jurisdiction. The answer further denied that the bill was ancillary and

that any foreclosure suit was pending in the Circuit Court, and on this ground denied the jurisdiction of the court. The answer also set up Section 720 of the Revised Statutes of the United States as a bar to the bill, alleged that by appearing in the Alabama suit and filing an answer the defendants therein had lost their right to bring this bill, again alleged that the plaintiff in the foreclosure suit and the Huguley Company were citizens of the same state so that the court in that suit had no jurisdiction, alleged that the Georgia charter of the Alabama and Georgia Company expired by legal limitation before the foreclosure sale was made, and denied the jurisdiction of the court to foreclose the mortgage if all or any part of the land mortgaged was in Alabama. The answer set out as an exhibit the answer filed in the Alabama suit (Rec. p. 510).

The Huguley Company and the Alabama and Georgia Company filed a petition in this court for a writ of prohibition to prevent the Circuit Court from entertaining jurisdiction of the suit. This petition was denied on February 24, 1902. *In re Huguley Mfg. Co.*, 184 U. S. 297.

On October 8, 1901, an injunction was ordered as prayed for, to remain in force until further order of the court (Rec. p. 538). On June 19, 1902, the plaintiff in the present suit moved to strike the answer from the files as evasive and no answer (Rec. p. 538). No action apparently was taken on that motion. On September 29, 1902, the case was "submitted upon the bill and proceedings in this cause ancillary to the proceedings in the cause lately pending in this court of J. J. Robinson, as trustee, etc., against Alabama & Georgia Manufacturing Company, *et al.*, and upon the record in said last named cause" (Rec. p. 539) and the injunction was made perpetual.

From the final decree granting a perpetual injunction

the Alabama and Georgia Company and the Huguley Company appealed, the other defendants refusing to join (Rec. pp. 540-542). The errors assigned were failure to dismiss for lack of jurisdiction of the subject matter and of the parties, on the grounds that there was not the necessary diversity of citizenship, that the bill was not ancillary, that the foreclosure decree was not binding on the Alabama and Georgia Company as an Alabama corporation, that there was no jurisdiction over the persons of the defendants, that the suit was local and could not be brought outside of Alabama, that Revised Statutes, Section 720, prohibited the suit, that there was not sufficient evidence to support the decree, that there was lack of equity, that the remedy was misconceived, that the foreclosure sale was inoperative in Alabama, that no decree had been rendered in the foreclosure suit against the Huguley Company (apparently on the theory that if wrongly described as organized in Georgia it was not a party to that suit), that an injunction should not be granted against an accounting, that the controversy should be left to the Alabama court, and again that the sale was a nullity and the court without jurisdiction in the foreclosure suit (Rec. pp. 542-546).

On January 12, 1904, the Circuit Court of Appeals, Judge Pardee dissenting, reversed the decision of the Circuit Court and ordered the bill dismissed for want of jurisdiction of the subject matter, apparently on the ground that the corporations plaintiffs in the Alabama suit were for all purposes distinct from and independent of the corporations defendants in the foreclosure suit, and not affected by the proceedings in the latter suit (Rec. p. 551). An application for a rehearing was denied (Rec. p. 573).

On March 22, 1904, upon petition of the appellant, a writ of *certiorari* was issued to the Circuit Court of Appeals

and the record was thereupon returned into this court and filed on April 13, 1904.

The proceedings in this litigation up to the present time, so far as reported, with some unreported opinions of the Circuit Court have been as follows:

Robinson v. *Alabama & G. Mfg. Co.*, 48 Fed. Rep. 12 (1891). Demurrer to original foreclosure bill overruled. Lamar and Newman, JJ.

Ibid., Record, p. 133 (1892). Decree adjudging default and ordering foreclosure. Newman, J.

Ibid., 51 Fed. Rep. 268 (1892). Demurrer to application for allowance of counsel fees sustained. Newman, J.

Alabama & G. Mfg. Co. v. *Robinson*, 56 Fed. Rep. 690 (1893). First decree for foreclosure and sale reversed. Pardee, McCormick, and Toulmin, JJ.

Robinson v. *Alabama & G. Mfg. Co.*, 67 Fed. Rep. 189 (1894). Decree for restitution and for a second foreclosure. Newman, J.

Ibid., Record, p. 354 (1895). Decree ordering a resale of the property. Newman, J.

Alabama & G. Mfg. Co. v. *Robinson*, 72 Fed. Rep. 708

(1896). Decree as to restitution and for second foreclosure affirmed. Pardee, McCormick, and Boarman, JJ.

Robinson v. *Alabama & G. Mfg. Co.*, 89 Fed. Rep. 218 (1898). Decree on account for rents and profits and application thereof to deficiency in proceeds of mortgage. Newman, J.

Ibid., Record, p. 427 (1898). Decree on application to tax costs and apply rents and profits to mortgage debt. Newman, J.

Ibid., Record, p. 435 (1898). Decree on manner of applying rents and profits to mortgage debt. Newman, J.

Huguley Mfg. Co. v. *Galeton Cotton Mills*, 94 Fed. Rep. 269 (1899). Decree as to rents and profits, etc., affirmed. Pardee, McCormick, and Shelby, JJ.

Ibid., 175 U. S. 726 (1899). Petition for writ of *certiorari* denied.

Riverdale Cotton Mills v. *Alabama & G. Mfg. Co.*, 111 Fed. Rep. 431 (1901). Preliminary injunction restraining prosecution of suit in Alabama granted. Newman, J.

Huguley Mfg. Co. v. *Galeton Cotton Mills*, 184 U. S. 290 (1902). Appeal from final decree dismissed.

In re The Huguley Mfg. Co., 184 U. S. 297 (1902). Leave to file petition for prohibition against taking jurisdiction of ancillary bill denied.

Alabama & G. Mfg. Co. v. *Riverdale Cotton Mills*, 127 Fed. Rep. 497 (1904). Present bill ordered to be dismissed. McCormick and Shelby, JJ.; Pardee, J., dissenting.

ASSIGNMENT OF ERRORS.

FIRST. The Circuit Court of Appeals erred in ordering the cause to be remanded to the Circuit Court with directions to dismiss the bill.

SECOND. The Circuit Court of Appeals erred in holding that the bill was not ancillary to the foreclosure suit and therefore within the jurisdiction of the Circuit Court.

THIRD. The Circuit Court of Appeals erred in holding that the decree of the Circuit Court was not effectual to foreclose the mortgage as to property in Alabama.

FOURTH. The Circuit Court of Appeals erred in holding that the decree of foreclosure rendered by the Circuit Court was open to the collateral attack made in the Alabama suit.

FIFTH. The Circuit Court of Appeals erred in holding that the Huguley Manufacturing Company, one of the respondents in this suit, was not a party defendant to and bound by the decree in the foreclosure suit.

SIXTH. The Circuit Court of Appeals erred in holding that it was material whether the Alabama and Georgia Manufacturing Company as a corporation of Alabama was bound by the foreclosure decree or not.

SEVENTH. The Circuit Court of Appeals erred in holding that the Alabama and Georgia Manufacturing Company as a corporation of Alabama was not a party defendant to and bound by the decree in the foreclosure suit.

SYNOPSIS OF ARGUMENT.

FIRST.

THE PRESENT SUIT IS ANCILLARY TO THE FORECLOSURE SUIT.

I.

A proceeding to prevent a decree from being defeated is ancillary to the proceeding in which the decree was rendered.

Dunn v. *Clarke*, 8 Peters 1.
Minnesota Co. v. *St. Paul Co.*, 2 Wall. 609.
Johnson v. *Christian*, 125 U. S. 642.
Carey v. *Houston & Texas Central Railway Co.*, 161 U. S. 115, 130.
Root v. *Woolworth*, 150 U. S. 401.
French v. *Hay*, 22 Wall. 250.
Dietzsch v. *Huidekoper*, 103 U. S. 494.

II.

The purchaser at a judicial sale may bring such a suit, to protect the title acquired.

Root v. *Woolworth*, 150 U. S. 401.
Blossom v. *Railroad Co.*, 1 Wall. 655.
Kneeland v. *American Loan & Trust Co.*, 136 U. S. 89.
Aderholt v. *Henry*, 82 Ala. 541.

Minnesota Co. v. *St. Paul Co.*, 2 Wall. 609.
Julian v. *Central Trust Co.*, 193 U. S. 93, 112.

III.

The present suit was ancillary within the foregoing principles.

1 Bates on Federal Equity Procedure, Sect. 97.
Julian v. *Central Trust Co.*, 193 U. S. 93, 113, 114.
Root v. *Woolworth*, 150 U. S. 401.
Haralson v. *George's Executor*, 56 Ala. 295.

SECOND.

AS THE PRESENT SUIT WAS ANCILLARY TO THE FORECLOSURE SUIT THE CIRCUIT COURT PROPERLY TOOK JURISDICTION.

I.

The Circuit Court of the United States has jurisdiction without regard to citizenship or other grounds of any proceeding ancillary to a suit before it.

Pacific R.R. of Mo. v. *Mo. Pac. Ry. Co.*, 111 U. S. 505, 522.
Dunn v. *Clarke*, 8 Peters 1.

Krippendorf v. *Hyde*, 110 U. S. 276.
Labette County Commissioners v. *Moulton*, 112 U. S. 217.
Dewey v. *West Fairmont G. C. Co.*, 123 U. S. 329.
Johnson v. *Christian*, 125 U. S. 642.
Root v. *Woolworth*, 150 U. S. 401.
White v. *Ewing*, 159 U. S. 36.
Carey v. *Houston & T. C. Ry. Co.*, 161 U. S. 115.
Julian v. *Central Trust Co.*, 193 U. S. 93.

II.

Section 720 of the Revised Statutes was no bar to the maintenance of the suit.

French v. *Hay*, 22 Wall. 250.
Dietzsch v. *Huidekoper*, 103 U. S. 494.
Moran v. *Sturges*, 154 U. S. 256, 269 et seq.
Julian v. *Central Trust Co.*, 193 U. S. 93.
Bowdoin College v. *Merritt*, 59 Fed. Rep. 6.

See also:

Sharon v. *Terry*, 36 Fed. Rep. 337, 365, per Field, J.
State Trust Co. v. *Kansas City P. & G. R.R. Co.*, 110 Fed. Rep. 10.
Stewart v. *Wisconsin Central Ry. Co.*, 117 Fed. Rep. 782.

THIRD.

THE DECREE OF THE CIRCUIT COURT IN THE FORECLOSURE SUIT WAS EFFECTUAL TO FORECLOSE THE MORTGAGE WHEREVER THE LAND WAS SITUATED.

I.

A suit to foreclose a mortgage is transitory.

Phelps v. *McDonald*, 99 U. S. 298, 308.
Toller v. *Carteret*, 2 Vern. 494.
Penn. v. *Lord Baltimore*, 1 Ves. Sr. 444.
Paget v. *Ede*, L. R. 18 Eq. 118.
Mead v. *N. Y. H. & N. R.R. Co.*, 45 Conn. 199, 223.
Reed v. *Reed*, 75 Me. 264.
Eaton v. *McCall*, 86 Me. 346.
Pingree v. *Coffin*, 12 Gray 288.
Union Trust Co. v. *Olmsted*, 102 N. Y. 729.

II.

The Circuit Court had power effectually to decree the foreclosure of a mortgage covering land outside the district.

Muller v. *Dows*, 94 U. S. 444.
Boston Safe Deposit & Trust Co. v. *Bankers & M. Tel Co.*, 36 Fed. Rep. 288.
Ford v. *Delta & Pine Land Co.*, 43 Fed. Rep. 181, 189.
Woodbury v. *Allegheny & K. R.R. Co.*, 72 Fed. Rep. 371, 375.

International B. & T. Co. v. *Holland Trust Co.*, 81 Fed. Rep. 422.
Central Trust Co. v. *Wabash, St. L. & P. Ry. Co.*, 29 Fed. Rep. 618.
Farmers L. & T. Co. v. *Chicago & Atlantic Ry. Co.*, 27 Fed. Rep. 146, 148.

III.

It is immaterial that the decree of foreclosure did not require a confirmatory deed from the mortgagor or owner of the equity of redemption.

See *Muller* v. *Dows*, 94 U. S. 444
Root v. *Woolworth*, 150 U. S. 401.

FOURTH.

THE VALIDITY OF THE FINAL DECREE OF THE CIRCUIT COURT IN THE FORECLOSURE SUIT WAS NOT OPEN TO THE COLLATERAL ATTACK MADE IN THE ALABAMA SUIT.

I.

A final decree of the Circuit Court of the United States cannot be collaterally attacked on the ground that the diversity of citizenship necessary to give jurisdiction was lacking.

M'Cormick v. *Sullivani*, 10 Wheat. 192.
Ex parte Tobias Watkins, 3 Peters 193, 207.

Cutler v. *Huston*, 158 U. S. 423.
Des Moines N. & R.R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552.
Dowell v. *Applegate*, 152 U. S. 327.
Evers v. *Watson*, 156 U. S. 527.
Lacassagne v. *Chapuis*, 144 U. S. 119.

II.

The jurisdiction of the Circuit Court could not be attacked on the ground that no part of the land was situated in Georgia.

Ritchie v. *McMullen*, 159 U. S. 242.
Rose v. *Himely*, 4 Cranch 241, 269.
Scott v. *McNeal*, 154 U. S. 34.
Thompson v. *Whitman*, 18 Wall. 457.
United States v. *Arredondo*, 6 Peters 691, 709.
Des Moines N. & R.R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552.
In re Sawyer, 124 U. S. 200, 220, 221.
Dowell v. *Applegate*, 152 U. S. 327, 340.
Mellen v. *Moline Iron Works*, 131 U. S. 352, 367.
Hollins v. *Brierfield Coal & Iron Co.*, 150 U. S. 371, 380.

FIFTH.

THE HUGULEY COMPANY WAS BOUND BY THE DECREE IN THE FORECLOSURE SUIT WHETHER ORGANIZED UNDER THE LAWS OF GEORGIA OR NOT.

I.

The Huguley Company now before the court is the same corporation that was a party to the foreclosure suit.

II.

A final decree against a corporation cannot be impeached for an erroneous allegation admitted by the defendant as to the state under the laws of which the corporation exists.

Black on Judgments, Sect. 213.
The Lafayette Insurance Co. v. *French,* 18 How. 404.
Guinard v. *Heysinger,* 15 Ill. 288.
Pond v. *Ennis,* 69 Ill. 341.
Hoffield v. *Board of Education,* 33 Kan. 644.
Cleaveland v. *Boston Five Cents Sav. Bk.,* 129 Mass. 27.
National Bank v. *Distilling Co.,* 41 W. Va. 530.
Smith v. *Bowker,* 1 Mass. 76.
United States National Bank v. *Venner,* 172 Mass. 449.
Washington Co. Nat. Bk. v. *Lee,* 112 Mass. 521.
Thatcher v. *West River Nat. Bk.,* 19 Mich. 196.

SIXTH.

AS THE FORECLOSURE DECREE WAS BINDING ON THE HUGULEY COMPANY THE PRESENT SUIT IS MAINTAINABLE EVEN THOUGH THAT DECREE WAS INVALID AGAINST THE ALABAMA AND GEORGIA COMPANY AS A CORPORATION OF ALABAMA.

I.

The Huguley Manufacturing Company at the time of the foreclosure was the owner of the equity of redemption.

II.

The Alabama and Georgia Company was not a necessary party to a foreclosure of the mortgage.

Jones on Mortgages, 6th Ed., Sec. 1404.
Story on Equity Pleadings, 10th Ed., Sec. 197.
Bigelow v. *Bush*, 6 Paige 343.
Wilkinson v. *May*, 69 Ala. 33.
Thomas v. *Jones*, 84 Ala. 302.
Boutwell v. *Steiner*, 84 Ala. 307.
Belloc v. *Rogers*, 9 Cal. 123.
Gutzeit v. *Pennie*, 98 Cal. 327.
Swift v. *Edson*, 5 Conn. 531.
Stevens v. *Campbell*, 21 Ind. 471.
Davis v. *Hardy*, 76 Ind. 272.
West v. *Miller*, 125 Ind. 70.
Johnson v. *Monell*, 13 Iowa 300.
Johnson v. *Foster*, 68 Iowa 140.
Miller v. *Thompson*, 34 Mich. 10.

Osborn v. *Crump*, 57 Miss. 622. Semble.
Chester v. *King*, 2 N. J. Eq. 405.
Root v. *Wright*, 21 Hun. 344.
Miner v. *Smith*, 53 Vt. 551.
Delaplaine v. *Lewis*, 19 Wis. 476.
Cf. *Ayres* v. *Wiswall*, 112 U. S. 187.

III.

It is immaterial that the Alabama and Georgia Company was joined as a defendant in the foreclosure suit.

See *Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S. 371, 380.

IV.

The Huguley Manufacturing Company is the only real party in interest in the suit in Alabama and in the present suit

See *Tubb* v. *Fort*, 58 Ala. 277.

V.

The suit is, therefore, maintainable against the Huguley Company irrespective of the Alabama and Georgia Company.

See *Kitchens* v. *Hutchins*, 44 Ga. 620.
Newburg v. *Munshower*, 29 Oh. St. 617.

SEVENTH.

THE ALABAMA AND GEORGIA COMPANY, ONE OF THE APPELLEES IN THIS SUIT, WAS ALSO IN FACT BOUND BY THE DECREE IN THE FORECLOSURE SUIT.

I.

A corporation organized under the laws of two states is a single corporation as to its acts, obligations and liabilities.

Graham v. *Boston, Hartford & Erie Railroad Co.*, 118 U. S. 161.
Nashua & L. R.R. Co. v. *Boston & L. R.R. Co.*, 136 U. S. 356.
Railroad Co. v. *Vance*, 96 U. S. 450.
Muller v. *Dows*, 94 U. S. 444.
Uphoff v. *C. St. L. & N. O. R.R. Co.*, 5 Fed. Rep. 545.
Horne v. *B. & M. R.R. Co.*, 18 Fed. Rep. 50.
Nashua & L. R.R. Co. v. *Boston & L. R.R. Co.*, 19 Fed. Rep. 804.
Burger v. *Grand Rapids & I. R.R. Co.*, 22 Fed. Rep. 561, 564.
Union Trust Co. v. *Rochester & P. R.R. Co.*, 29 Fed. Rep. 609.
Cf. *Louisville N. A. & C. Ry. Co.* v. *Louisville Trust Co.*, 174 U. S. 552.
Morawetz on Private Corporations, 2d Ed., Sec's 995, 996.
Railroad Co. v. *Harris*, 12 Wall. 65.

Cf. *St. Louis & San Francisco Ry. Co.* v. *James*, 161 U. S. 545.

II.

The cases as to the jurisdiction of the Federal Court depend upon a wholly distinct question from that here under consideration.

Cf. *Ohio & Mississippi Railroad Co.* v. *Wheeler*, 1 Black 286.

Corporations are recognized outside of the state granting the charter.

Railroad Co. v. *Harris*, 12 Wall. 65, 81–83.
Cowell v. *Springs Co.*, 100 U. S. 55.
Christian Union v. *Yount*, 101 U. S. 352.

Cases of corporations organized in one state licensed to do business in another

Railroad Co. v. *Harris*, 12 Wall. 65.
Goodlett v. *Louisville & N. R.R. Co.*, 122 U. S. 391.
Martin's Adm. v. *B. & O. R.R. Co.*, 151 U. S. 673.
St. L. & St. F. Ry. Co. v. *James*, 161 U. S. 545.
St. J. & Gr. I. R.R. Co. v. *Steele*, 167 U. S. 659.
Southern Ry. Co. v. *Allison*, 190 U. S. 326.

are to be distinguished from cases of dual incorporation.

Railway Co. v. *Whitton*, 13 Wall. 270.
Memphis & C. R.R. Co. v. *Alabama*, 107 U. S. 581.

Pennsylvania R.R. Co. v. *St. Louis, A. & T. H. R.R. Co.*, 118 U. S. 290.

Cf. *Louisville N. A. & C. Ry. Co.* v. *Louisville Trust Co.*, 174 U. S. 552.

Nashua & L. R.R. Co. v. *Boston & L. R.R. Co.*, 136 U. S. 356.

III.

It is immaterial whether the charter of the Alabama and Georgia Manufacturing Company expired before the foreclosure decree was rendered or not.

Greeley v. *Smith*, 3 Story 657, 658.

National Bank of Selma v. *Colby*, 21 Wall. 609.

New Orleans v. *Gaines's Administrator*, 138 U. S. 595.

Reid v. *Holmes*, 127 Mass. 326.

See also:

Bridges v. *Smyth*, 8 Bing. 29.

Yaple v. *Titus*, 41 Pa. St. 195.

Powell v. *Washington*, 15 Ala. 803.

EIGHTH.

NO EVIDENCE WAS NECESSARY TO JUSTIFY THE COURT IN ENTERING THE DECREE.

I.

No material issue of fact was raised by the answer.

Analysis of answer.

The appearance and pleading of the present appellant in the Alabama suit is immaterial.

French v. *Hay*, 22 Wall. 250.
Dietzsch v. *Huidekoper*, 103 U. S. 494.

II.

The decree could properly be entered on a hearing upon bill and answer.

In re Sanford Fork and Tool Company, 160 U. S. 247.
Dillon v. *Barnard*, 21 Wall. 430, 437.

NINTH.

IF AND SO FAR AS ANY EVIDENCE WAS REQUIRED THERE WAS SUFFICIENT BEFORE THE COURT TO UPHOLD THE DECREE.

I.

All the facts alleged in the bill necessary to uphold the decree, not expressly admitted, were contained in the record of the foreclosure suit.

II.

The record in the foreclosure suit before the court was competent evidence.

See *Blossom* v. *Railroad Co.*, 1 Wall. 655.
Kneeland v. *Am. L. & T. Co.*, 136 U. S. 89.
Central Nat. Bk. v. *Hazard*, 30 Fed. Rep. 484.
Gunn v. *Wades*, 62 Ga. 20.
Shirley v. *Fearne*, 33 Miss. 653.

III.

If the answer showed any affirmative defence no evidence was necessary to defeat it.

Clarke v. *White*, 12 Pet. 178, 190.
Seitz v. *Mitchell*, 94 U. S. 580.
Farley v. *Kitson*, 120 U. S. 303, 317.

See also:

Gordon v. *Bell*, 50 Ala. 213.

TENTH.

THE BILL STATED A CLEAR CASE OF JURISDICTION IN EQUITY.

Dunn v. *Clarke*, 8 Peter 1.
French v. *Hay*, 22 Wall. 250.
Dietzsch v. *Huidekoper*, 103 U. S. 494.
Root v. *Woolworth*, 150 U. S. 401.
Julian v. *Central Tr. Co.*, 193 U. S. 93.

ELEVENTH.

IF THERE WERE ANY IRREGULARITIES OF PROCEDURE THEY WERE WAIVED.

There was an answer. If not it is too late to object. The lack of a replication was waived.

Reynolds v. *Crawfordsville Bank*, 112 U. S. 405.
National Bank v. *Insurance Co.*, 104 U. S. 54.
Clements v. *Moore*, 6 Wall. 299.
Fretz v. *Stover*, 22 Wall. 198.

TWELFTH.

THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF GEORGIA HAD JURISDICTION OVER THE PERSONS OF THE APPELLEES.

I.

Appearing and proceeding otherwise than for the sole purpose of objecting to the sufficiency of the service is a waiver of any defect of service.

Cooper v. *Reynolds*, 10 Wall. 308, 316.
Rothschild v. *Knight*, 176 Mass. 48, 55.
Pollard v. *Dwight*, 4 Cranch 421, 428.
Loomis v. *Wadhams*, 8 Gray 557.
Brown v. *Webber*, 6 Cush. 560, 564.
Voorhees v. *The Bank of the United States*, 10 Peters 449, 473.
Toland v. *Sprague*, 12 Peters 300, 331.
Harkness v. *Hyde*, 98 U. S. 476.

Wabash Western Railway v. *Brow*, 164 U. S. 271, 278.
Fitzgerald Construction Co. v. *Fitzgerald*, 137 U. S. 98.
St. Louis & San Francisco Ry. Co. v. *McBride*, 141 U. S. 127.
Cf. *Southern Pacific Company* v. *Denton*, 146 U. S. 202.

II.

The appellees appeared and proceeded in this suit without raising any objection to the sufficiency of the service.

THIRTEENTH.

THE COURT COULD NOT PROPERLY DISMISS THE BILL FOR WANT OF SERVICE.

I.

The case was one for substituted service.

Dunn v. *Clarke*, 8 Peters 1.
Webb v. *Barnwall*, 116 U. S. 193.
Pike v. *Gregory*, 94 Fed. Rep. 373.
Minnesota Co. v. *St. Paul Co.*, 2 Wall. 609, 633.

II.

If there was any defect the remedy was not to dismiss the bill, but to set aside the service.

There was a service of process.

See Georgia Code, Section 1899.

City Fire Insurance Co. v. *Carrugi*, 41 Ga. 660.
Equitable Life Ass'n v. *Gammon*, 119 Ga. 271.
Conn. Mut. Life Ins. Co. v. *Spratley*, 172 U. S. 602.

If objected to, the court could have ordered further service.

Bartlett v. *Sultan of Turkey*, 19 Fed. Rep. 346.

If insufficient it should at most be set aside.

Harkness v. *Hyde*, 98 U. S. 476.
Goldey v. *The Morning News*, 156 U. S. 518.

ARGUMENT.

FIRST.

THE PRESENT SUIT IS ANCILLARY TO THE FORECLOSURE SUIT.

I.

A proceeding to prevent a decree from being defeated is ancillary to the proceeding in which the decree was rendered.

Any suit brought to protect or give effect to a judgment or decree already rendered by the same court in a suit between the same parties or their privies, or growing out of such former suit, is an ancillary proceeding.

In *Dunn* v. *Clarke*, 8 Peters 1, a bill was brought by the defendants in an action of ejectment in which judgment had been recovered, to restrain enforcement of the judgment. This court held that the Circuit Court had jurisdiction without regard to the citizenship of the parties, because the bill was ancillary to the ejectment.

In *Minnesota Co.* v. *St. Paul Co.*, 2 Wall. 609, a bill was brought by one of the defendants in a foreclosure suit against the purchaser at the sale to determine the rights to certain property alleged in the bill not to have been covered by the mortgage. This court upheld the jurisdiction on the ground that the bill was ancillary, because the rights of the parties depended on the construction placed upon the acts of the court in the foreclosure suit.

Mr. Justice Miller delivering the opinion of the court said as to what constituted an ancillary proceeding:

"But we think that the question is not whether the proceeding is supplemental and ancillary or is independent and original, in the sense of the rules of equity pleading; but whether it is supplemental and ancillary or is to be considered entirely new and original, in the sense which this court has sanctioned with reference to the line which divides the jurisdiction of the Federal courts from that of the State courts. No one, for instance, would hesitate to say that, according to the English chancery practice, a bill to enjoin a judgment at law, is an original bill in the chancery sense of the word. Yet this court has decided many times, that when a bill is filed in the Circuit Court, to enjoin a judgment of that court, it is not to be considered as an original bill, but as a continuation of the proceeding at law; so much so, that the court will proceed in the injunction suit without actual service of subpoena on the defendant, and though he be a citizen of another State, if he were a party to the judgment at law. The case before us is analogous." p. 633.

In *Johnson* v. *Christian*, 125 U. S. 642, this court again held that a bill by a defendant at law to restrain enforcement of the judgment was ancillary so that jurisdiction did not depend on the citizenship of the parties.

In a later case this court said:

"It is very well settled that a bill in equity by a corporation or the stockholders of a corporation in the Circuit Court to set aside a final decree of that court against the corporation in a foreclosure suit upon the ground that such a decree was obtained by collusion and fraud, and the court had no jurisdiction to make it, is an ancillary suit and a continuation of the main suit so far as the jurisdiction of the Circuit Court as a court of the United States is concerned." *Carey* v. *Houston & Texas Central Railway Company*, 161 U. S. 115, 130.

For the same reasons a suit to enforce a judgment or decree or to protect a title acquired under a judgment or decree is ancillary to the original proceeding. Such a suit grows out of and is a continuation of the original suit in the same sense as a suit to impeach the judgment or decree or title acquired under the judgment or decree in the original suit. The jurisdiction of the court having once attached to the original subject matter, further proceedings necessary to give full effect to its jurisdiction, whether by way of preventing an injustice or of fully administering justice, are ancillary.

In *Root* v. *Woolworth*, 150 U. S. 401, the plaintiff filed his bill in the Circuit Court to restrain the defendant from asserting a title which many years before in a suit brought in the same court by the plaintiff's predecessor in estate against the defendant had been set up by the defendant and adjudged invalid. This court held that the bill could be maintained, although both parties were citizens of Nebraska, and although it was brought to recover real estate of which the plaintiff was not in possession, because it was ancillary to the former suit of which the Circuit Court had jurisdiction. Mr. Justice Jackson, delivering the opinion of the court, said:

> "It is well settled that a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments, which remain unreversed, when the subject-matter and the parties are the same in both proceedings." 150 U. S. 410, 411.

And again,

> "The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or writs of assistance in order to avoid the relitigation of questions once settled between the same parties, is well settled." 150 U. S. 411, 412.

In *French* v. *Hay*, 22 Wall. 250, a suit was brought in a state court in Virginia in which a decree was entered for the plaintiff who at once brought suit thereon in a state court in Pennsylvania. The defendant in these suits then removed the original suit to the Circuit Court of the United States and filed a bill in that court to restrain the further prosecution of the action in Pennsylvania. This court held the last suit was ancillary to the suit removed to the Circuit Court and could be maintained.

In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, a state court retained jurisdiction of an action of replevin removed to the Circuit Court of the United States, and upon final judgment for the defendant in the state court an action was brought by him against the plaintiff on the replevin bond. The plaintiff in replevin thereupon brought a bill in the Circuit Court to restrain the action on the replevin bond. This court held that the bill could be maintained, and said:

> "The bill in this case was, therefore, ancillary to the replevin suit, and was in substance a proceeding in the Federal Court to enforce its own judgment by preventing the defeated party from wresting the replevied property from the plaintiffs in replevin, who, by the judgment of the court were entitled to it, or what was in effect the same thing, preventing them from enforcing a bond for the return of the property to them." 103 U. S. 497.

II.

The purchaser at a judicial sale may bring such a suit, to protect the title acquired.

It is not necessary that one bringing an ancillary suit should be a party to the original litigation in which the judgment or decree was rendered. If he is the privy in

estate of a party, or derives the title or right which he seeks to protect from the decree, it is sufficient to give him a standing before the court because the suit is then as truly a continuation of the original litigation as if brought by the original party.

As to the right of one not a party to the original suit to maintain such a proceeding, this court said:

> "Under this principle Morton could undoubtedly have brought the bill to carry into effect the decree rendered in his favor against Root, and it is equally clear that his assignee, or privy in estate, has a right to the same relief that Morton could have asserted." *Root* v. *Woolworth*, 150 U. S. 401, 411.

The case of a purchaser at a judicial sale is much stronger. His title is derived from the decree itself. While not a party originally to the litigation he becomes for many purposes a party to the suit. He may, if the sale is not completed, petition for a completion and appeal from an order denying his petition.

Blossom v. *Railroad Co.*, 1 Wall. 655.

> "A purchaser or bidder at a master's sale in chancery subjects himself *quoad hoc* to the jurisdiction of the court, and can be compelled to perform his agreement specifically. It would seem that he must acquire a corresponding right to appear and claim, at the hands of the court, such relief as the rules of equity proceedings entitle him to." 1 Wall. 656.

This statement of the principles governing the rights of such persons was approved in *Kneeland* v. *American Loan & Trust Co.*, 136 U. S. 89.

Of the position of such a purchaser the Supreme Court of Alabama has said:

> "The purchaser becomes a *quasi* party to the cause in which the decree is rendered, subject to such orders as the court may make, and may move for confirmation, or resist an application by any party to have the sale set aside." *Aderholt* v. *Henry*, 82 Ala. 541, 542.

The purchaser's claims under the decree can be attacked by an ancillary proceeding to which he may properly be made a party.

Minnesota Co. v. *St. Paul Co.*, 2 Wall. 609.

A fortiori if the decree under which the purchaser holds is collaterally attacked in another court, he must have the same right to invoke the assistance of the court which entered the decree as if he had originally been a party. So far as that decree and the proceedings subsequent to it are concerned, he is a party, and as he takes the burden of that position so he is entitled to its benefit.

In the present case the appellant was made a party defendant (Rec. p. 492) to the suit in the Alabama chancery court in which it was sought to impeach the final decree rendered by the Circuit Court for the Northern District of Georgia in the foreclosure suit. The present bill was brought solely to prevent the appellees from attacking collaterally in the Alabama court the decree, binding upon them, rendered by the Circuit Court and affirmed by the Circuit Court of Appeals, on which the title of the appellant depends. Every reason that can be advanced in support of the decision in *Root* v. *Woolworth*, 150 U. S. 401, is applicable with added force here. While the appellant was not a party to the foreclosure suit, it takes title under the decree therein, and is in the same privity of estate as a purchaser from a party. If it is a sufficient answer to say, as the appellees have argued, that the rights under the decree could be sufficiently

enforced by producing the record in the Alabama court, that answer would have been equally cogent in *Root* v. *Woolworth*.

In *Julian* v. *Central Trust Co.*, 193 U. S. 93, this court gave full effect to these principles. In that case the Southern Railway Company in 1894 became the purchaser under a foreclosure decree of the Western North Carolina Railroad. In 1897 two suits were begun and judgments recovered against the Western North Carolina Railroad Company for personal injuries suffered long after the foreclosure sale. The Supreme Court of North Carolina held that notwithstanding the foreclosure the property was liable for these judgments recovered against the old corporation on the ground that as the Southern Railway Company was not a domestic corporation it did not acquire a title to the property free from claims subsequently arising against the former owner. Thereupon the Southern Railway Company filed a bill in the Circuit Court of the United States in which the foreclosure decree was entered to restrain any further proceedings to enforce the judgments against the property.

This court held that the Circuit Court had jurisdiction of such a bill as ancillary to the original proceeding, saying:

> "in effect it is sought to annul the order and decree of the Federal court because it has not operated to transfer the title to the purchaser." 193 U. S. 109.
>
> "If the sheriff is allowed to sell the very property conveyed by the Federal decree, such action has the effect to annul and set it aside, because in the view of the state court it was ineffectual to pass the title to the purchaser. In such case we are of opinion that a supplemental bill may be filed in the original suit with a view to protecting the prior jurisdiction of the Federal Court and to render effectual its decree." 193 U. S. 112.

The whole basis of the federal jurisdiction thus maintained was the protection of a purchaser claiming title under a decree of the federal court.

III.

The present suit was ancillary within the foregoing principles.

The doctrine as to what are ancillary proceedings has been summarized by a recent text writer, in a passage approved by this court, as follows:

> "A bill filed to continue a former litigation in the same court, or which relates to some matter already partly litigated in the same court, or which is an addition to a former litigation in the same court, by the same parties or their representatives standing in the same interest, or to obtain and secure the fruits, benefits and advantages of the proceedings and judgment in a former suit in the same court by the same or additional parties, standing in the same interest, or to prevent a party from using the proceedings and judgment of the same court for fraudulent purposes, or to restrain a party from using a judgment to perpetrate an injustice, or obtain an inequitable advantage over other parties to the former judgment or proceeding, or to obtain any equitable relief in regard to, or connected with, or growing out of, any judgment or proceeding at law rendered in the same court, or to assert any claim, right or title to property in the custody of the court, or for the defence of any property rights, or the collection of assets of any estate being administered by the court, is an ancillary suit." 1 Bates on Federal Equity Procedure, Sect. 97.

Approved in *Julian* v. *Central Trust Co.*, 193 U. S. 93, 113, 114.

The present case falls precisely within this definition. The sole object of the present bill is to establish in the Circuit Court for the Northern District of Georgia the validity of the title derived from a decree of that court, to retain in that court a litigation there begun and conducted to a conclusion. It is in the strictest sense a bill to carry into effect a former decree of the court.

The situation in the present case is precisely the same as in *Julian* v. *Central Trust Co.* The bill filed in the Alabama court was for the express purpose of attacking and in effect annulling the decree of the Circuit Court for the Northern District of Georgia, on the ground that the decree failed to give a good title to the purchaser at the sale. If, as this court decided in the case referred to, a federal court would have jurisdiction to restrain a levy upon the property, because the levy could be justified only on a ground in derogation of its decree, clearly a federal court has jurisdiction to restrain proceedings to recover such a judgment.

Obviously, the bill would be none the less ancillary if at the time it was filed the original suit had finally terminated. The principle on which jurisdiction of ancillary proceedings rests would be singularly futile if the moment a final decree in the original suit was entered the right to maintain ancillary proceedings to protect or give effect to the jurisdiction of the court was lost. In the large class of cases in which the ancillary proceedings are to restrain enforcing a judgment such a restriction would destroy the jurisdiction; and in like manner in those cases in which ancillary proceedings are brought to enforce or give effect to a decree. In *Root* v. *Woolworth*, 150 U. S. 401, the judgment on which the plaintiff's title rested, in aid of which he sought the assistance of the court, had been entered many years before. In *Julian* v. *Central Trust Co.*, 193 U. S. 93, so far as appears the original suit had been finally disposed of.

It is not, however, true, as contended by the appellees in the court below, that when this bill was filed the original foreclosure suit was no longer pending in the Circuit Court. The present bill was filed on June 10, 1901. (Rec. p. 473.) It is a matter of record in this court that an appeal in the foreclosure suit from the final decree affirmed by the Circuit Court of Appeals was then pending in this court and was not disposed of until February 24, 1902. See *Huguley Manufacturing Co.* v. *Galeton Cotton Mills*, 184 U. S. 290.

The necessity from practical considerations of having all the proceedings in one court is obvious. The parties really interested were all before the Circuit Court and subject to its orders. Any proceeding in that court to vacate the sale would constitute with the previous proceedings a single record. An original bill in another jurisdiction would make a new suit, increasing the expense, confusing the records and protracting the litigation.

Haralson v. *George's Executor*, 56 Ala. 295.

Had the appeal to this court, pending when the bill in Alabama was filed, proved successful in any particular so that the cause had been sent back for further proceedings, there would have been presented the extraordinary and unseemly spectacle of a Circuit Court of the United States exercising jurisdiction to foreclose a mortgage and a state court of Alabama exercising jurisdiction for the redemption of the same mortgage.

It has been argued that an ancillary suit could not be maintained while the appeal was pending in this court. It is not clear whether this argument proceeds upon the theory that pending the appeal there is no suit in the Circuit Court in which an ancillary bill can be filed, or on what ground. Aside from the objection that so far as

appears there was no supersedeas upon the appeal to this court, it is clear that the pendency of the appeal cannot oust the jurisdiction of the Circuit Court to protect its jurisdiction and that of this court. The alternative would be a bill filed in this court; for certainly the right to take jurisdiction of an ancillary proceeding existed before the appeal, and certainly it exists after the appeal is disposed of; that there should be an interregnum pending the appeal, during which no federal court can take jurisdiction of ancillary proceedings however urgently required, is inconceivable.

SECOND.

AS THE PRESENT SUIT WAS ANCILLARY TO THE FORECLOSURE SUIT, THE CIRCUIT COURT PROPERLY TOOK JURISDICTION.

I.

The Circuit Court of the United States has jurisdiction without regard to citizenship or other grounds of any proceeding ancillary to a suit before it.

The right of a Circuit Court of the United States to entertain jurisdiction, without regard to citizenship, of proceedings ancillary to a suit already before the court is firmly established.

The jurisdiction over the original suit gives jurisdiction over the ancillary proceedings.

> "The bill, though an original bill in the chancery sense of the word, is a continuation of the former suit, on the question of the jurisdiction of the Circuit Court."

Pacific R.R. of Mo. v. *Mo. Pac. Ry. Co.*, 111 U. S. 505, 522.

Such jurisdiction extends to the protection of property involved in the litigation before the court, to preventing the abuse of process of the court, to restraining the enforcement of judgments or decrees, to proceedings for carrying into effect its judgments and decrees, and to all other proceedings necessary to enable the court fully and effectually to administer justice in suits brought before it.

Jurisdiction over such ancillary proceedings is obviously necessary for the satisfactory and efficient action of the Circuit Court and such jurisdiction has accordingly been uniformly upheld by this court.

Dunn v. *Clarke*, 8 Peters 1.
Krippendorf v. *Hyde*, 110 U. S. 276.
Labette County Commissioners v. *Moulton*, 112 U. S. 217.
Dewey v. *West Fairmont G. C. Co.*, 123 U. S. 329.
Johnson v. *Christian*, 125 U. S. 642.
Root v. *Woolworth*, 150 U. S. 401.
White v. *Ewing*, 159 U. S. 36.
Carey v. *Houston & T. C. Ry. Co.*, 161 U. S. 115.
Julian v. *Central Trust Co.*, 193 U. S. 93.

II.

Section 720 of the Revised Statutes was no bar to the maintenance of the suit.

Section 720 of the Revised Statutes of the United States provides that:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This section and the analogous provision of the Judiciary Act of March 2, 1793, C. 22, Section 5, have always been construed as not applicable to cases in which a court of the United States has first acquired jurisdiction, and the injunction is asked for to enable it fully to exercise such jurisdiction. Whenever, therefore, an injunction is asked for by a bill which is ancillary to a suit or controversy of which the federal court first acquired jurisdiction, the issue of the injunction is not within the prohibition of this provision of the Revised Statutes.

In *French* v. *Hay*, 22 Wall. 250, a suit was brought in a state court of Virginia and a decree rendered for the plaintiff. The defendant in that suit then removed the case to the Circuit Court of the United States. Before the removal was actually effected, the plaintiff obtained a transcript of the decree and brought an action on it in Pennsylvania. After the removal the defendant in the Pennsylvania suit filed a bill in the Circuit Court to which he had removed the original suit asking an injunction against the further prosecution of the action in Pennsylvania. A preliminary injunction was granted, which, upon the Circuit Court entering a final decree in the suit first brought, was made permanent.

Mr. Justice Swayne, delivering the opinion of this court, said:

> "The prohibition in the Judiciary Act against the granting of injunctions by the courts of the United States touching proceedings in state courts has no application here. The prior jurisdiction of the court below took the case out of the operation of that provision." 22 Wall. 253.

In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, the Circuit Court in like manner granted an injunction against further proceedings in a state court which were incon-

sistent with the exercise by the Circuit Court of a jurisdiction already acquired. Disposing of the objection that the statute forbade the issue of an injunction, this court said:

> "A court of the United States is not prevented from enforcing its own judgments by the statute which forbids it to grant a writ of injunction to stay proceedings in a State Court. Dietzsch, the original plaintiff in the action on the replevin bond, represented the real parties in interest, and he was a party to the action of replevin, which had been pending, and was finally determined in the United States Circuit Court. That court had jurisdiction of his person, and could enforce its judgment in the replevin suit against him, or those whom he represented, their agents and attorneys. The bill in this case was filed for that purpose and that only." 103 U. S. 497.

And again:

> "As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law, and the court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by a direct proceeding. These views are sustained by the case of *French, Trustee*, v. *Hay*, (22 Wall. 250), between which and this case there is no substantial difference." 103 U. S. 498.

The foregoing cases were approved in *Moran* v. *Sturges*, 154 U. S. 256, 269 et seq.

The same rule was applied in *Julian* v. *Central Trust Company*, 193 U. S. 93. A bill was brought to restrain a levy on property purchased by the Southern Railway Company under a foreclosure decree against the Western

North Carolina Railroad Company. The levy was to satisfy a judgment recovered in a state court against the Western North Carolina Railroad Company on a cause of action arising subsequently to the foreclosure, and was based on the theory that the Southern Railway Company had not acquired a good title. This court said:

> "In such cases where the Federal Court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding sec. 720, Rev. Stat., restrain all proceedings in a state court which would have the effect of defeating or impairing its jurisdiction." 193 U. S. 112.

In *Bowdoin College* v. *Merritt*, 59 Fed. Rep. 6, a bill was brought in the Circuit Court to remove a cloud upon title. Pending the suit a person not properly a party, but deemed by the Court to have submitted to the jurisdiction, brought an action in a state court setting up a claim on substantially the same grounds as those asserted by the defendants in the Circuit Court. On application the plaintiff in the Circuit Court was allowed to file a supplemental bill making the plaintiff in the state court a defendant and enjoining further proceedings in the state court. Mr. Justice McKenna, then the Circuit Judge, upheld the right to an injunction on the ground that the federal court had first acquired jurisdiction of the controversy.

See also *Sharon* v. *Terry*, 36 Fed. Rep. 337, 365, per Field, J.

State Trust Co. v. *Kansas City P. & G. R.R. Co.*, 110 Fed. Rep. 10.

Stewart v. *Wisconsin Central Ry. Co.*, 117 Fed. Rep. 782.

The test by which the application of Section 720 of the Revised Statutes is to be determined is the same as the test of federal jurisdiction. If the proceeding in which an injunction is sought is in fact ancillary, so that the court is authorized to take jurisdiction for that reason alone, although there is not the requisite diversity of citizenship, then the provision of the Revised Statutes does not apply because the injunction is incidental or ancillary to the exercise of its jurisdiction by the Circuit Court, and an injunction may be granted.

In the present case the bill seeking an injunction was filed to restrain a proceeding in the state court by which it was sought to annul the decree of the Circuit Court under which the foreclosure sale was had and under which the petitioner claimed title. The original foreclosure suit was still pending in the Circuit Court awaiting the decision of this court upon an appeal. If the appeal was dismissed, leaving the final decree of the Circuit Court unreversed, as in fact happened, then the proceeding in the state court, if successful, would defeat and was solely intended to defeat the operation of that decree. A stronger case for an ancillary bill and for restraining proceedings in the state court to enable the Circuit Court to exercise its jurisdiction over a subject-matter to which that jurisdiction had long before attached, cannot well be imagined.

THIRD.

THE DECREE OF THE CIRCUIT COURT IN THE FORECLOSURE SUIT WAS EFFECTUAL TO FORECLOSE THE MORTGAGE WHEREVER THE LAND WAS SITUATED.

I.

A suit to foreclose a mortgage is transitory.

The jurisdiction of the court did not depend on the land being situated in Georgia, however much or little that fact might determine the form of decree or propriety of granting relief.

A suit in equity to foreclose a mortgage is a transitory action that may be brought wherever jurisdiction over the persons of the necessary parties can be obtained.

> "Where the necessary parties are before a court of equity, it is immaterial that the *res* of the controversy, whether it be real or personal property, is beyond the territorial jurisdiction of the tribunal." *Phelps* v. *McDonald*, 99 U. S. 298, 308.

This rule was applied by this court to the foreclosure of mortgages in *Muller* v. *Dows*, 94 U. S. 444, and is in accord with recognized principles of equity jurisdiction elsewhere.

Toller v. *Carteret*, 2 Vern. 494.
Penn. v. *Lord Baltimore*, 1 Ves. Sr. 444.
Paget v. *Ede*, L. R. 18 Eq. 118.
Mead v. *N. Y. H. & N. R. R. Co.*, 45 Conn. 199, 223.
Reed v. *Reed*, 75 Me. 264.
Eaton v. *McCall*, 86 Mc. 346.
Pingree v. *Coffin*, 12 Gray 288.
Trust Co. v. *Olmsted*, 102 N. Y. 729.

In denying the location of any part of the land in Georgia the defendants are not contradicting any fact on which jurisdiction depends.

II.

The Circuit Court had power effectually to decree the foreclosure of a mortgage covering land outside the district.

In *Muller* v. *Dows*, 94 U. S. 444, a bill was brought in the Circuit Court for the district of Iowa by the trustee of a mortgage, executed by a railroad corporation organized under the laws of Iowa and also under the laws of Missouri, covering property partly in the one state and partly in the other. The mortgagor corporation was sued as a corporation organized under the laws of Iowa only. The Circuit Court decreed a foreclosure and sale of the whole property.

On appeal this court held that the decree was valid and that the Circuit Court could foreclose the mortgage on the entire property and order a sale of the entire property. The decision was put upon the obvious necessity for some means of foreclosing such mortgages, and upon the control of the court over the property, though a part was without its territorial jurisdiction, by reason of the presence before the court of all persons interested and its power to compel such acts to be done by them as might be required to effectuate the result.

The jurisdiction thus established has since been freely exercised by the Circuit Courts.

Boston Safe Deposit & Trust Co. v. *Bankers & M. Tel. Co.*, 36 Fed. Rep. 288.

Ford v. *Delta & Pine Land Co.*, 43 Fed. Rep. 181, 189.

Woodbury v. *Allegheny & K. R.R. Co.*, 72 Fed. Rep. 371, 375.
International B. & T. Co. v. *Holland Trust Co.*, 81 Fed. Rep. 422.

In *Central Trust Company* v. *Wabash, St. L. & P. Ry. Co.*, 29 Fed. Rep. 618, Mr Justice Brewer, speaking of the foreclosure of a mortgage covering the entire Wabash Railroad system which extended into several states, said:

> "Of the propriety of a foreclosure in one court operating upon the entire property running through several states, and of the validity of a sale made in pursuance of that foreclosure, and the completeness of the title which will pass by such sale, there can be now no longer a question. In the case of *Muller* v. *Dows*, 94 U. S. 444, that question was put at rest." p. 620.

In *Farmers L. & T. Co.* v. *Chicago & Atlantic Ry. Co.*, 27 Fed. Rep. 146, 148 Judge Gresham assumed that a decree might be entered in one circuit foreclosing as an entirety a mortgage covering a railroad extending into several states.

In the present case, as in *Muller* v. *Dows*, the Circuit Court had before it all the parties necessary to enable it to make an effectual foreclosure. Even if the Alabama and Georgia Company should be deemed two corporations and not to be bound by the decree except as a corporation of Georgia, it would be immaterial because the equity of redemption was vested in the Huguley Company and that corporation was certainly before the court.

III.

It is immaterial that the decree of foreclosure did not require a confirmatory deed from the mortgagor or owner of the equity of redemption.

It has sometimes apparently been erroneously supposed that the decision of this Court in *Muller* v. *Dows* depended wholly upon the decree requiring a deed to be executed by the mortgagor or the trustee or both. By the decree appealed from in that case:

> "The court decreed a sale of the entire property covered by the mortgage, and directed the master, who was ordered to make the sale, to execute a good and sufficient deed or deeds to the purchaser. It also declared that after the sale both the defendant corporations and the complainants, trustees named in the mortgage, as well as all persons claiming under them or either of them, be barred and foreclosed from all interest, estate, right, claim, or equity of redemption of, in, and to the property reserving, however, the rights of the holders of the bonds and coupons secured by the first mortgage, then remaining outstanding and unpaid. It directed that the two defendant corporations should surrender to the purchaser the property sold and conveyed, upon the execution, approval, and delivery of the master's deed; and that, as further assurance, the Chicago and South-western Railway Company should, on the approval and delivery of the master's deed, convey all the property therein described to the purchaser, by their good and sufficient deed." 94 U. S. 448.

Comparing the case and this decree with a Pennsylvania case cited in support, this court said:

> "The mortgagors here were within the jurisdiction of the court. So were the trustees of the mortgage. It was at the instance of the latter the master was ordered to make the sale. The court might have ordered the trustees to make it. The mortgagors who were foreclosed were enjoined against claiming property after the master's sale, and directed to make a deed to the purchaser in further assurance. And the court can direct the trustees

> to make a deed to the purchaser in confirmation of the sale. We cannot, therefore, declare void the decree which was made." 94 U. S. 450.

The Court did not, it will be noticed, rely upon the execution of any deed by the trustee, for none had been executed; and it dealt with the deed from the mortgagor as "in further assurance."

There is no force in the suggestion that a decree ordering a sale and conveyance by a master in a suit in which the only persons in whom title could be vested were before the Court, fails of effect because it does not require those persons actually to execute a deed. It would obviously be within the power of the Court to appoint a master to execute such a deed in behalf of either of these parties to the suit, if either should be required to do so and should refuse. Such a course was followed in the suit out of which grew the case of *Root* v. *Woolworth*, 150 U. S. 401 (see statements of facts in that case, 150 U. S. at p. 402.)

A master appointed to make a sale where the court has all the parties before it, may certainly be given by the court all the powers that the court could require the parties before it to confer on the master to enable him to execute the decree. To require the mortgagor to execute a deed is, therefore, unnecessary, and only as this court said "in further assurance."

One other consideration is decisive of the point as far as the present case is concerned. The maintenance of the suit is not dependent on any question of the passage of title. The decree of foreclosure now in question, as is usual, provided that the equity of redemption should be thereby foreclosed as against the mortgagor and all persons claiming under it since the date of the trust deed. (Rec. p 360, par. 8.) This decree the court could certainly make as against the defendants personally, whether an

effectual sale and conveyance could be ordered or not, and one taking title under the sale ordered and made pursuant to the decree can certainly invoke the enforcement by the court of this part of the decree as a protection. The question is not now of the validity of the title of the plaintiff, nor of the propriety of the decree entered in the foreclosure suit—though we submit neither matter is really doubtful. If the court in the foreclosure suit could make a personal decree against the defendants in that suit claiming any title in this land, wherever situated, and has done so, then this suit can be maintained to enforce that decree.

The Circuit Court for the Northern District of Georgia, according to *Muller* v. *Dows*, unquestionably had jurisdiction to foreclose the mortgage; on any theory of that case it could have made a decree that would have carried a clear title to property in Alabama as well as to property in Georgia, for it could have ordered conveyances by all the respondents and even assuming that there was an Alabama and Georgia Company of Alabama not a party to and not bound by that decree, nevertheless the foreclosure would be effective because the entire equity of redemption was in the Huguley Company. If then the title conveyed by the master is imperfect without such confirmation, yet as the court has decreed the equity of redemption to be foreclosed it can, as against persons bound personally by that decree, restrain any attempt to assert an equity of redemption in defiance of the decree. Both the corporations, appellees in this suit, are it is submitted so bound, but the Huguley Company at any rate is indisputably bound by the foreclosure decree, and the Huguley Company according to the allegations of the appellees in their bill of complaint in the Alabama suit (Rec. p. 492) was the sole owner of the equity of redemption.

FOURTH.

THE VALIDITY OF THE FINAL DECREE OF THE CIRCUIT COURT IN THE FORECLOSURE SUIT WAS NOT OPEN TO THE COLLATERAL ATTACK MADE IN THE ALABAMA SUIT.

I

A final decree of the Circuit Court of the United States cannot be collaterally attacked on the ground that the diversity of citizenship necessary to give jurisdiction was lacking.

The appellees in their answer in the present suit and in their bill of complaint in the Alabama Court have relied much on the supposed lack of jurisdiction of the Circuit Court in the foreclosure suit. Their objection is based on the alleged lack of the necessary diversity of citizenship and on a supposed want of jurisdiction if the land mortgaged was situated in Alabama.

The appellees allege in support of their objection that they are citizens of Alabama, that the Huguley Company is a citizen of Alabama only, that the plaintiff in the foreclosure suit was also a citizen of Alabama, and that consequently if either of the appellees was a party to the foreclosure suit the jurisdiction of the court was ousted. (Rec. pp. 506, 507.) The same view seems to have been relied on to some degree by the Circuit Court of Appeals.

In the original foreclosure suit the Alabama and Georgia Company and the Huguley Manufacturing Company were described as corporations of Georgia. These allegations were admitted in the answer to that bill. (Rec. p. 14.) It is now alleged by the appellees that the Alabama and Georgia Company was also a corporation of Alabama and that the Huguley Company was a cor-

poration of Alabama only. So far as the Alabama and Georgia Company is concerned, it will be shown that the whole corporation is bound by the decree rendered against it when sued as a Georgia corporation. If such is not the case however, it creates no lack of jurisdiction in the Circuit Court so far as diversity of citizenship is concerned.

So far as relates to the Huguley Company, the position of the appellees is baldly that if a corporation is sued as a corporation of Georgia, and admits the allegation as to its citizenship, thus showing the necessary diversity of citizenship, yet if in fact the allegation is erroneous, any decree rendered is void for want of jurisdiction.

No such proposition can be successfully maintained. When a final decree or judgment has been rendered in the Circuit Court of the United States against a corporation described as organized under the laws of a given state and that allegation is not controverted the judgment or decree cannot be collaterally impeached on the ground that the allegation as to citizenship was untrue.

The courts of the United States are of limited jurisdiction, but they are not inferior courts, and where a final judgment or decree has actually been entered, all presumptions are to be made in favor of jurisdiction. If the jurisdiction is not shown upon the record, but a final decree or judgment is none the less rendered, that decree or judgment may be reversed on error or appeal, but cannot be collaterally attacked.

M'Cormick v. *Sullivant*, 10 Wheat. 192.
Ex parte Tobias Watkins, 3 Peters 193, 207.
Cutler v. *Huston*, 158 U. S. 423.

In like manner, if a suit is removed to the Circuit Court the final judgment or decree, if unreversed, is valid and

binding, although the facts justifying removal are not alleged in the record, and even though it is made to appear affirmatively that there was not a right to remove.

Des Moines N. & R.R. Co. v. *Iowa Homestead Co.*, 123 U. S 552.
Dowell v. *Applegate*, 152 U. S. 327.
Evers v. *Watson*, 156 U. S. 527.

In *Des Moines N. & R.R. Co.* v. *Iowa Homestead Co.* a bill in equity was brought in a state court in Iowa to recover certain amounts paid for taxes. The defendant relied upon a final decree in a suit between the same parties and others brought in a state court and removed by the defendants therein to the Circuit Court. The plaintiff contended that this decree was invalid because it appeared that some of the defendants, including the present defendant, were citizens of the same state as the plaintiff in that suit. This court, on writ of error to the Supreme Court of Iowa, held that the former decree was valid. This court said:

> "It is said, however, that these decisions apply only to cases where the record simply fails to show jurisdiction. Here it is claimed that the record shows there could be no jurisdiction, because it appears affirmatively that the Navigation and Railroad Company, one of the defendants, was a citizen of the same State as the plaintiff. But the record shows, with equal distinctness, that all the parties were actually before the court, and made no objection to its jurisdiction. . . . Whether in such a case the suit could be removed was a question for the Circuit Court to decide when it was called on to take jurisdiction. If it kept the case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those

> between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity." 123 U. S. 558, 559.

Where the record on its face shows jurisdiction in the Circuit Court, and all the parties to the suit have acquiesced in the allegations showing jurisdiction, and in the assumption of jurisdiction by the court, the case is much stronger. To allow a defendant under such circumstances to controvert collaterally the existence of the facts is not only to permit him to attack collaterally the judgment or decree, but to permit him to do this after he has expressly admitted the existence of the necessary facts and thus led the court to assume and exercise the jurisdiction which he now seeks to deny.

This court has held that where the record states facts necessary to give jurisdiction which are not denied, the final decree cannot be attacked collaterally, though it is alleged that the statement of those facts was false and made only for the purpose of bringing the suit in the Circuit Court.

Lacassagne v. *Chapuis*, 144 U. S. 119.

In that case a suit had been brought by one alleging herself to be an alien to establish a right to land against a citizen of Louisiana, and the plaintiff obtained a decree. Subsequently, a suit was there brought against the executor of the former plaintiff by persons not parties to the former suit, claiming as mortgagees of the former defendant to recover the property on the ground, among others, that the decree in the first suit was void because the plaintiff therein was in fact a citizen of Louisiana, so that the Circuit Court had no jurisdiction. This court said:

> "As to the allegation in the bill that the court was without jurisdiction of the suit brought by the widow Cavé, because she alleged falsely therein that she was a citizen of France, when in fact she was a citizen of Louisiana, and thus the court had no jurisdiction of the suit as between her and Marceline Cavailhez, that question cannot be raised and adjudicated in this suit. By the record of the former suit, there appeared to be jurisdiction, and the plantiff cannot question it by means of this suit, when the question is not raised by Marceline Cavailhez, who was the defendant in the former suit." 144 U. S. 126.

In the original foreclosure suit the Huguley Manufacturing Company was sued under the description of a corporation organized under the laws of Georgia; it appeared and admitted the allegation. If the corporation in fact existed under the laws of Alabama, there was a misdescription in the nature of a misnomer, but the identity of the corporation appears on the record, and that corporation cannot now consistently with the principles laid down in the authorities cited assert that all the proceedings were void as to it, when its own admission led the court to take jurisdiction. It is clear from the decisions that no principle of law renders the final decree of the Circuit Court for the Northern District of Georgia in the original foreclosure suit a nullity for want of jurisdiction. It is equally clear that the respondent has by its acts estopped itself from asserting facts impeaching the jurisdiction, since it has deliberately admitted a fact, peculiarly in its own knowledge, the truth of which establishes the existence of that jurisdiction.

If an estoppal can ever be created, it must arise against one who for ten years has allowed a litigation to continue, involving three appeals to the Circuit Court of Appeals and an appeal to this court, and at the end of that litigation seeks to avoid the result by denying an

allegation admitted at the outset and never questioned throughout the proceedings.

II

The jurisdiction of the Circuit Court could not be attacked on the ground that no part of the land was situated in Georgia.

The Huguley Company is indisputably the same corporation that was a party to the foreclosure suit, and is, therefore, bound as a party to that suit. The same is true of the Alabama and Georgia Company, unless the court should hold that there are two wholly distinct corporations of that name.

A party to a suit cannot, after a final decree, impeach that decree by alleging and seeking to prove that matters of fact necessary to sustain the decree and properly alleged were untrue. If such facts were denied in the former suit there has been an adjudication which is binding; if not denied, the defendant has had an opportunity to put them in issue and cannot collaterally attack the judgment or decree on any ground involving a denial of those allegations. This cannot be done even in the case of foreign judgments.

Ritchie v. *McMullen*, 159 U. S. 235, 242.

A judgment of a court of general, as distinguished from inferior, jurisdiction can be impeached collaterally only on the ground that the court had not jurisdiction of the person of the party or of the subject matter of the litigation. Facts necessary to establish such lack of jurisdiction can be shown even if doing so contradicts statements in the record; as to all other matters the record is conclusive.

The foundation of this exception to the conclusive effect of records is plain and serves to show the limits of the exception. If a defendant has not in fact been brought into court he has not had his day and should not be concluded by the action of the court. The record as to him is no record. To say that he cannot show the failure to obtain jurisdiction of his person because such jurisdiction is by the return of an officer or otherwise shown upon the face of the record, is, as has been said by this court, to reason in a circle; such a position involves saying that it is a record because there was jurisdiction of his person and that jurisdiction of his person is shown because it was a record.

In like manner, to give jurisdiction of the subject matter the subject matter must exist, and its non-existence may be shown in contradiction of the record. If a vessel is condemned as lawful prize the vessel must in fact have been captured, *Rose* v. *Himely*, 4 Cranch 241, 269; if an administrator is appointed it must be of the estate of one actually dead, *Scott* v. *McNeal*, 154 U. S. 34; if seizure and possession of a *res* within the bailiwick is the foundation of jurisdiction, there must be a *res* which was so seized, *Thompson* v. *Whitman*, 18 Wall. 457.

In every such case there can be no question of jurisdiction, no binding record, unless the subject matter on which, or by reason of which, the court is to act exists, and, therefore, its non-existence can be shown notwithstanding the record and judgment.

The cases, however, in which jurisdiction exists only by reason of the existence of some particular subject matter or *res* for the court to act upon are practically few. Jurisdiction to act ordinarily exists whenever a controversy is presented to the court for adjudication. Even though the case be one which by law the court should refuse to entertain, there is no such lack of jurisdiction as renders its action a nullity.

> "The power to hear and determine a cause is jurisdiction; it is 'coram judice,' whenever a case is presented which brings this power into action; if the petitioner states such a case in his petition that on a demurrer the court would render judgment in his favor, it is an undoubted case of jurisdiction, whether on an answer denying and putting in issue the allegations of the petition, the petitioner makes out his case, is the exercise of jurisdiction conferred by the filing of a petition containing all the requisites and in the manner prescribed by law." *United States* v. *Arredondo*, 6 Peters 691, 709.

The court may commit an error in proceeding with the case at all, as where in the federal court there is not the requisite diversity of citizenship or amount involved, or may commit an error in its finding of facts necessary to authorize the relief granted, or may commit an error of law in its decision upon the right to any relief, or may grant relief in equity when there exists an adequate remedy at law, but in all these cases alike it is error and must be corrected by direct proceedings.

Des Moines N. & R.R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552.
In re Sawyer, 124 U S. 200 220, 221.
Dowell v. *Applegate*, 152 U. S. 327, 340.
Mellen v. *Moline Iron Works*, 131 U. S. 352, 367.
Hollins v *Brierfield Coal & Iron Co.*, 150 U. S. 371 380.

In the present case the bill in the foreclosure suit set forth a cause of action clearly within the jurisdiction of the Circuit Court. It described a part of the mortgaged premises, by referring to the copy of the mortgage deed annexed to the bill (Rec. pp. 2, 4), as in Georgia. The allegation that a part of the land was in Georgia was not

in any sense the allegation of a jurisdictional fact, for the court had jurisdiction at least to determine whether that part of the land was within or without the boundary of the state. Whatever error it might commit in such decision, and whatever effect that error might have on the virtue of the master's deed, there was no lack of jurisdiction. The Huguley Company, therefore, could not collaterally attack the decree or the effect of acts done under it on the ground that this allegation was erroneous.

Of course in point of fact, as has been shown, the allegation was not material, because the court could decree foreclosure in any event, but it was not even open to the appellees to raise the question.

FIFTH.

THE HUGULEY COMPANY WAS BOUND BY THE DECREE IN THE FORECLOSURE SUIT WHETHER ORGANIZED UNDER THE LAWS OF GEORGIA OR NOT.

I.

The Huguley Company now before the Court is the same corporation that was a party to the foreclosure suit.

It is alleged in the answer filed by the appellees in the Circuit Court (Rec. pp. 506, 507) that the Huguley Company was never incorporated in Georgia. Assuming this to be true, the corporation of that name, an appellee in the present suit, is none the less bound by the foreclosure decree.

There is no dispute as to the identity of the corporation now before the court with the corporation of the

same name which was a party to the foreclosure suit. In the fifth paragraph of the answer filed by the Huguley Company in the present suit it is alleged:

> "For further answer, respondents aver that this court was without jurisdiction of said original foreclosure cause for that the complainant therein and the Huguley Manufacturing Company were citizens of the same State, to wit: the State of Alabama. In this connection, respondents aver on information and belief that said Huguley Manufacturing Company was never incorporated or organized in the state of Georgia although, as they further aver, the solicitors who represented said corporation in said former litigation in this court were not aware it was not so incorporated, and said fact was not discovered until after the filing of said suit in Alabama, and before the bringing of this suit." (Rec. p. 507.)

This contains a clear statement that the corporation represented "in said former litigation" and the corporation of the same name in this litigation are one and the same.

The allegation of the ninth paragraph of the answer does not deny that the Huguley Company was a party to the foreclosure suit. The allegation (Rec. p. 508) is that the respondents "were never parties as corporations under the laws of Alabama to said foreclosure proceedings." As the Huguley Company existed only as a corporation of Alabama and as the Huguley Company was a party to the foreclosure suit, it follows that the corporation now before the court is the corporation a party to the foreclosure suit.

Again, the bill filed by the Huguley Company and the Alabama and Georgia Company in the state court in Alabama alleges (Rec. p. 488) as to the foreclosure suit that

> "a corporation, known as the 'Alabama and Georgia Manufacturing Company,' alleged to be a corporation organized under the laws of Georgia only, and said Huguley Manufacturing Company, together with the said W. T. Huguley, were the sole defendants to said bill."

"Said Huguley Manufacturing Company" is the corporation of that name plaintiff in the Alabama bill and there alleged to have been a defendant in the foreclosure suit, and the Huguley Manufacturing Company plaintiff in the Alabama bill is indisputably the defendant named in this bill.

The same identity is apparent from the whole record, leaving out these admissions of the pleadings. The property described in the Alabama bill (Rec. pp. 486, 487) as belonging to the Huguley Company, there a plaintiff, is identical with the property described in the foreclosure suit (Rec. pp. 4, 5) and sold under the decree of the Circuit Court (Rec. pp. 379, 390) to which the Huguley Company, there a defendant, asserted its title. The officer of the Huguley Company who executed the bonds on the last appeal in the foreclosure suit (Rec. p. 471) is identical with the officer of the Huguley Company who swore to its answer in the present suit (Rec. p. 510.)

The question is reduced then purely to this—whether if a corporation existing under the laws of one state is sued and erroneously described as organized under the laws of another state, and appears and defends upon the merits, admitting the erroneous allegation, a final decree rendered against it is void.

II.

A final decree against a corporation cannot be impeached for an erroneous allegation admitted by the defendant as to the state under the laws of which the corporation exists.

In the foreclosure suit the Huguley Company was described as a corporation organized under the laws of Georgia. (Rec. p. 1.) This statement may be deemed an allegation designed to show the jurisdiction of the Court by reason of diversity of citizenship, or like the corporate name of the defendant a description to identify the defendant.

It has already been shown that an error in an allegation of citizenship designed to show jurisdiction does not render the final judgment or decree void or open to collateral attack.

An error in the description of the defendant's place of residence can have no effect except as a misnomer. The place of residence is not material for any other purpose.

The law is settled that a misnomer to which no objection is taken by plea in abatement does not impair the validity of the final judgment or decree. If the person or corporation actually intended to be sued is served with process and permits judgment to be rendered by default, or appears and failing to plead in abatement unsuccessfully defends the suit, the final judgment or decree against it is good. If the suit is brought on the judgment or decree, the identity of the defendant in that suit and in the former suit may be alleged and the judgment roll or record be introduced in support of the plaintiff's case, with such proof as may be required to show the identity.

Black on Judgments, Sect. 213.

In *The Lafayette Insurance Co.* v. *French*, 18 How. 404, an action was brought against "the Lafayette Insurance Co., a citizen of the state of Indiana." The action was on a judgment recovered in Ohio against "the president, directors and company of the Lafayette Insurance Co." The court said the difference in name did not prevent the judgment being given in evidence to support the action since it was averred that the judgment was recovered against the defendants in the suit then pending, and it must be assumed that fact was proved. As to the effect of a mistake in name the court said:

> "the only question open here is, whether, if a mistake be made in the name of a defendant, and he fails to plead it in abatement, the judgment binds him, though called by a wrong name. Of this we have no doubt. Evidence that it was an erroneous name of the same person must, therefore, be admissible; otherwise, a mistake in the defendant's name, instead of being available only by a plea in abatement, would render a judgment wholly inoperative." 18 How. 409.

The same doctrine prevails in the state courts.

Guinard v. *Heysinger*, 15 Ill. 288.
Pond v. *Ennis*, 69 Ill. 341.
Hoffield v. *Board of Education*, 33 Kan. 644.
Cleaveland v. *Boston Five Cents Sav. Bk.*, 129 Mass. 27.
National Bank v. *Distilling Co.*, 41 W. Va. 530.

In *Smith* v. *Bowker*, 1 Mass. 76, it was held that a misdescription of the place of residence of a defendant did not impair the judgment, service having in fact been made on the right person.

The same rule applies if the error is in the name or description of the plaintiff.

> *United States National Bank* v. *Venner*, 172 Mass. 449.
> *Washington Co. Nat. Bk.* v. *Lee*, 112 Mass. 521.
> *Thatcher* v. *West River Nat. Bk.*, 19 Mich. 196.

In the present case the identity of the Huguley Company, now before the court with the Huguley Company defendant in the foreclosure suit, was duly alleged. The bill set forth the fact that the foreclosure suit was brought against the Huguley Manufacturing Company which was the owner of the equity in the mortgaged premises (Par. II, Rec. p. 474), and that "the said Huguley Manufacturing Company" with the Alabama and Georgia Company after prosecuting unsuccessfully the last appeal to the Circuit Court of Appeals filed the bill in the Alabama Chancery Court (Par. VI, Rec. p. 478). These allegations were not denied by the present defendants. (See Answer, Rec. p. 505.)

The identity of the present defendant Huguley Manufacturing Company with the corporation of the same name defendant in the foreclosure suit is, therefore, fully alleged, the allegation is not controverted, and the final decree cannot be impeached for the error in describing it as a corporation created by the laws of Georgia.

SIXTH.

AS THE FORECLOSURE DECREE WAS BINDING ON THE HUGULEY COMPANY THE PRESENT SUIT IS MAINTAINABLE, EVEN THOUGH THAT DECREE WAS INVALID AGAINST THE ALABAMA AND GEORGIA COMPANY AS A CORPORATION OF ALABAMA.

I.

The Huguley Manufacturing Company at the time of the foreclosure was the owner of the equity of redemption.

The record shows throughout that the Huguley Company was the owner of the equity of redemption in the mortgaged premises and the real party defendant in all the proceedings.

The original foreclosure bill alleged (Rec. p. 2) that the Huguley Manufacturing Company was the owner of the equity of redemption in the mortgaged premises when the bill was filed. The Huguley Company not only failed to deny this allegation, but by an amendment to its answer expressly alleged that it was such owner (Rec. p. 22).

After the first and invalid sale of the property at foreclosure in 1892, the Huguley Manufacturing Company petitioned for restitution, again alleging its ownership and that at the time of sale it was in possession (Rec. pp. 158, 160).

After the second sale of the property at foreclosure in 1896 the Huguley Manufacturing Company filed its answer to a petition for confirmation of the sale. This answer alleged (Rec. p. 392), "This respondent is the real owner of said property, and the real party in interest as defendant in the foreclosure proceedings."

The Huguley Manufacturing Company alone of the respondents in the foreclosure suit filed exceptions to the master's report on the petition for an account of rents and profits (Rec. p. 411.) Counsel for the Huguley Manufacturing Company petitioned for an allowance of fees (Rec. p. 426). The Huguley Manufacturing Company alone petitioned for an ascertainment of the balance on the mortgage debt (Rec. p. 433), opposed the petition of the purchasers for a deed (Rec. p. 442), moved for a reconsideration of the order of the court on this petition (Rec. p. 448), and joined as the principal appellant in the appeal to the Circuit Court of Appeals (Rec. p. 452).

The bill filed in the Alabama state court by these appellees alleged in paragraph seventh that the Huguley Company "purchased and acquired all the property herein above described subject to said mortgage, and is now the owner of the same, subject to said mortgage." (Rec. p. 492.)

Finally, it was alleged in paragraph second of the bill of complaint filed by the appellant that the Huguley Manufacturing Company became the purchaser of the mortgaged premises subject to the mortgage. This allegation is not denied in the answer.

II.

The Alabama and Georgia Company was not a necessary party to a foreclosure of the mortgage.

It is the well settled law that to a foreclosure suit the mortgagor is not a necessary party if the entire interest of the mortgagor in the property mortgaged has been conveyed away. In order to secure a decree for payment of a deficiency the mortgagor must of course be joined,

since such a decree rests upon the personal obligation of the mortgagor and can be enforced only in a proceeding to which he is a party.

A suit to foreclose the mortgage is not a suit to enforce a personal obligation. The foreclosure is to cut off the equity of redemption and the only necessary party to such a suit is the party in whom the right of redemption is vested.

Jones on Mortgages, 6th Ed., Sec. 1404.
Story on Equity Pleadings, 10th Ed., Sec. 197.

In *Bigelow* v. *Bush*, 6 Paige 343, a suit was brought to foreclose a mortgage. The mortgagor, who had conveyed all his interest in the property was not joined as a defendant. Chancellor Walworth held that the mortgagor was not a necessary party to the suit.

Speaking of the mortgagor's position, he said:

> "He was, therefore, a proper although not a necessary party, to a bill of foreclosure against the grantee of the equity of redemption. In other words so far as concerns this first mortgage, the complainant might, if he had thought proper, have made the mortgagor a party, for the purpose of having a decree over against him for a deficiency. But the assignee of the equity of redemption, who had no interest whatever in that question, and who could not be in any way benefited by having him made a party for that purpose, has no right to object that the original mortgagor is not a party to the suit." 6 Paige 345.

In Alabama the same rule has been laid down.

Wilkinson v. *May*, 69 Ala. 33.
Thomas v. *Jones*, 84 Ala. 302.
Boutwell v. *Steiner*, 84 Ala. 307.

The doctrine has been followed uniformly wherever the question has arisen.

Belloc v. *Rogers*, 9 Cal. 123.
Gutzeit v. *Pennie*, 98 Cal. 327.
Swift v. *Edson*, 5 Conn. 531.
Stevens v. *Campbell*, 21 Ind. 471.
Davis v. *Hardy*, 76 Ind. 272.
West v. *Miller*, 125 Ind. 70.
Johnson v. *Monell*, 13 Iowa 300.
Johnson v. *Foster*, 68 Iowa 140.
Miller v. *Thompson*, 34 Mich. 10.
Osborn v. *Crump*, 57 Miss. 622. Semble.
Chester v. *King*, 2 N. J. Eq. 405.
Root v. *Wright*, 21 Hun. 344.
Miner v. *Smith*, 53 Vt. 551.
Delaplaine v. *Lewis*, 19 Wis. 476.

In *Ayres* v. *Wiswall*, 112 U. S. 187, this court held a suit brought against the original mortgagors and purchasers from them seeking a foreclosure and a personal decree for a deficiency could not be removed to the Circuit Court if one of the mortgagors was a citizen of the same state as the plaintiff. The suit in that case was brought specifically to enforce the personal liability and the court rested its decision on that ground. The case in no wise conflicts with the rule that the mortgagor need not be joined as a party to secure merely a foreclosure.

In the foreclosure suit originally brought by Robinson, the trustee, no relief was sought by way of enforcing a personal liability. The bill prayed only (Rec. p. 3) for a determination of the amount secured, payment thereof by a short day on pain of foreclosure, upon default in such payment a sale by order of court, the appointment

of a receiver *pendente lite* and an injunction against interference with the property. The suit was thus purely a foreclosure suit and as the Alabama and Georgia Company had parted with all title, that corporation was not a necessary party to the suit either as a corporation of Georgia or of Alabama.

III.

It is immaterial that the Alabama and Georgia Company was joined as a defendant in the foreclosure suit.

The original foreclosure bill did not pray for a deficiency decree (Rec. p. 3). The bill joined the Alabama and Georgia Company as a defendant. If the proceedings in that suit are binding upon the Alabama and Georgia Company wherever organized, then both appellees are fully bound by the foreclosure decree and it is clearly immaterial whether one of them was unnecessarily joined or not. If the Alabama and Georgia Company as a corporation of Alabama was not bound by the proceedings in the foreclosure suit, then as to any personal relief that was decreed against it the decree would not be binding upon it in that capacity. But this hypothesis rests upon the theory that such corporation was not a party, therefore the result only is that a party unnecessary to an effectual decree for a foreclosure was not joined.

The Alabama and Georgia Company at least as a Georgia corporation was a party to the foreclosure suit and bound by the proceedings. It was unnecessary in order to effect a valid foreclosure that the corporation should be joined. So far, if at all, as the decree purported to give personal relief by enforcing a personal liability that corporation was a proper party whether there was a dual corporation of the same name and bound by the proceedings or not.

It is clear that the joinder or non-joinder of the Alabama and Georgia Company or of either of its parts, if these are separate entities, cannot affect the validity of a decree against the Huguley Manufacturing Company. At most the joinder or non-joinder would be error, but even if error and a fatal error, it does not affect the validity of the decree. There was no lack of jurisdiction over the Huguley Company, nothing to disable the court from making a decree cutting off all equity of redemption as to it. The defence of non-joinder or of misjoinder could be waived like any other defence in equity. Not having objected at the time the Huguley Company cannot now impeach a decree rendered against it on the ground that it had a defence.

> *Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S. 371, 380.

So, too, if the decree went further than the mere ordering of a foreclosure sale and cutting off the equity of redemption, such additional relief might be erroneously granted but could not invalidate the sale. The sale could be ordered and the equity of redemption cut off if the Huguley Company alone had the equity of redemption, so long as that company was brought before the court. If the court ordered other relief, and erred in doing so, it could not make the decree invalid so far as the relief rightly granted against the Huguley Company was concerned.

In any respect, therefore, it becomes immaterial for the purpose of determining whether the equity of redemption is cut off to determine whether the Alabama and Georgia Company is bound, both as a Georgia and as an Alabama corporation or not. The record shows that the equity of redemption was in the Huguley Company and shows that

that company was bound by the decree foreclosing that right; nothing more was required to support the present bill.

IV.

The Huguley Manufacturing Company is the only real party in interest in the suit in Alabama and in the present suit.

The only purpose of the present suit is to protect the foreclosure and give effect to the decree of the Circuit Court cutting off the equity of redemption.

The suit brought in the Alabama State Court asked as relief (1) that the equity of redemption should be established as still existing; (2) that an account of rents and profits pending the foreclosure suit should be taken; (3) that a decree for such rents and profits should be rendered in favor of the complainants; (4) that a receiver be appointed to operate the mills *pendente lite;* (5) that the mills be kept insured; and (6) for general relief. (Rec. pp. 492, 493.)

It is clear that all of the relief asked rests upon the ground that the owner of the equity of redemption is not bound by the foreclosure decree. The first prayer is directly to establish an equity of redemption and all the other prayers are for relief incident to such right.

In none of the matters as to which relief is asked has the Alabama and Georgia Company any real interest. The equity of redemption, it has been shown, was confessedly in the Huguley Company when the original foreclosure suit was brought. The right to the rents and profits for which an account is asked, had any such right existed, would likewise have been wholly in the Huguley Company.

The Alabama and Georgia Company had no interest in an account of the rents and profits pending foreclosure. On the facts alleged in the bill in the Alabama state court the Huguley Company was not bound to pay the bonds; it was interested in the application of the rents and profits to such payment solely as a means of avoiding foreclosure. So far from conceding the right on the part of the Alabama and Georgia Company to have the rents and profits applied in payment of the mortgage bonds to its exoneration, one of the grounds alleged for the last appeal in the foreclosure suit to the Circuit Court of Appeals was the application of the rents and profits allowed in that suit to the reduction of the mortgage debt in alleged derogation of the rights of the Huguley Company (Rec. p. 459). While as between the bondholders and the Huguley Company the former were entitled to this application of the rents and profits, and it was so decided by the Circuit Court of Appeals, the Huguley Company, as between it and the Alabama and Georgia Company, was entitled to such rents and profits from the time it acquired title to the property subject to the mortgage.

Tubb v. *Fort*, 58 Ala. 277.

The Alabama and Georgia Company, therefore, had no interest in this relief.

Finally the appointment of a receiver was asked solely for the benefit of the Huguley Company as alleged owner of the property in order to protect the property during the pendency of the suit.

These considerations show that the Alabama and Georgia Company was merely a nominal party in the Alabama State Court. The suit there was brought solely in the interest of the Huguley Company and was founded exclusively on alleged rights of the Huguley Company in

the property. The present suit was brought to restrain the prosecution of the suit in the Alabama State Court; no other relief is sought (Rec. p. 481). In the present suit, therefore, the real party in interest is the Huguley Company and it alone.

V.

This suit is, therefore, maintainable against the Huguley Company irrespective of the Alabama and Georgia Company.

Since the Huguley Company is the only real party in interest in the Alabama suit, and, therefore, in this suit, it is clear that the bill should not be dismissed for want of jurisdiction if there is no want of jurisdiction over the Huguley Company. If the Huguley Company was bound by the foreclosure decree there can be no doubt of the jurisdiction of the Circuit Court over the subject matter of this suit so far as the Huguley Company is concerned. Every issue raised in this suit relating to the rights of the parties in the property in question was raised or could have been raised in the foreclosure suit. This suit, therefore, as to the Huguley Company is solely a suit to prevent that corporation from attacking collaterally in the state court in Alabama a decree rendered by the Circuit Court which is by the hypothesis binding on the Huguley Company. Such a suit is beyond question an ancillary proceeding.

The fact that the Alabama and Georgia Company is joined in this suit as a defendant, because it is joined in the Alabama suit as a plaintiff, cannot affect the jurisdiction of the Circuit Court in this suit so far as the Huguley Company is concerned; as to that corporation, therefore, at any rate the suit is maintainable, and as no

objection has been taken to the joinder of the Alabama and Georgia Company any error in joining it has been waived.

The validity or invalidity of the decree as against the Alabama and Georgia Company, either in the foreclosure suit or in this suit, is not material. Even if either decree was void as to the latter corporation for want of jurisdiction or other cause, it would not invalidate the decree as against the Huguley Company.

Kitchens v. *Hutchins*, 44 Ga. 620.
Newburg v. *Munshower*, 29 Oh. St. 617.

If the party against whom an invalid decree is rendered is not a necessary party to the proceeding *à fortiori* the invalidity of the decree as against him cannot affect its validity as to a co-defendant.

SEVENTH.

THE ALABAMA AND GEORGIA COMPANY, ONE OF THE APPELLEES IN THIS SUIT, WAS ALSO IN FACT BOUND BY THE DECREE IN THE FORECLOSURE SUIT.

I.

A corporation organized under the laws of two states is a single corporation as to its acts, obligations and liabilities.

A corporation created by charters from two separate states, each constituting the same individuals a corporation under the same name and with the same powers, has, for purposes of transacting business, only one existence.

For special purposes it may be important to distinguish between the entity created by the laws of one state and that created by the laws of the other. For all purposes of corporate action and liability the distinction does not exist.

In *Graham* v. *Boston, Hartford & Erie Railroad Co.*, 118 U. S. 161, a stockholder in the railroad company sought to have a mortgage declared void and set aside on the ground that it was not authorized by the stockholders. The corporation was one existing under the laws of New York, Massachusetts, Rhode Island and Connecticut. The only authority for the mortgage was a vote at a meeting of stockholders held in New York. This court held the mortgage valid, saying:

> "That a meeting in one of several States of the stockholders of a corporation chartered by all those States is valid in respect to the property of the corporation in all of them, without the necessity of a repetition of the meeting in any other of those States, is, we think, a sound proposition. Whether it be or be not true that proceedings of persons professing to act as corporators, when assembled without the bounds of the sovereignty granting the charter, are void, *Miller* v. *Ewer*, 27 Maine 509, there is no principle which requires that the corporators of this consolidated corporation should meet in more than one of the States in which it has a domicil, in order to the validity of a corporate act." (pp. 168, 169.)

Describing the nature of the corporation itself, Mr. Justice Blatchford, delivering the opinion of the court, said:

> "The Boston, Hartford & Erie Company, therefore, though made up of distinct corporations, chartered by the legislatures of different States, had a capital stock which was a unit, and only one set of shareholders, who had an interest, by virtue of

> their ownership of shares of such stock, in all of its property everywhere. In its organization and action, and the practical management of its property, it was one corporation, having one board of directors, though, in its relations to any State, it was a separate corporation, governed by the laws of that State as to its property therein. It, therefore, had a domicil in each State, and the corporators or shareholders could, in the absence of any statutory provision to the contrary, hold meetings and transact corporate business in any one State, so as to bind the corporation in respect to its property everywhere. *Bridge Co.* v. *Mayer*, 31 Ohio St. 317; Pierce on Railroads, 20." 118 U. S. 169, 170.

The principle was involved to some extent, although not expressly passed upon by the court in *Nashua & L. R.R. Co.* v. *Boston & L. R.R. Co.*, 136 U. S. 356. In that case the plaintiff corporation was organized in New Hampshire. Later an identical corporation was created in Massachusetts; and still later a statute was passed in Massachusetts apparently intended to effect complete consolidation and two months after an act was passed in New Hampshire authorizing such a union. The corporation brought suit in the Circuit Court in Massachusetts describing itself as a corporation organized under the laws of New Hampshire for an accounting under a contract between the consolidated or "interstate" corporation and the defendant. Objection was taken to the jurisdiction on the ground that the corporation was also organized in Massachusetts, and to the merits on the ground among others that, if the suit was maintainable, the Massachusetts corporation was a necessary party. p. 362.

The court held that the Circuit Court had jurisdiction and also decided for the plaintiff on the merits, thus repudiating the argument that for purposes of enforcing

the obligation or obtaining a final and binding adjudication there was a second corporate entity that must be made a party.

In *Railroad Co.* v. *Vance*, 96 U. S. 450, a corporation chartered by the laws of Indiana and Illinois sought by suit in the Circuit Court of the United States in Illinois, describing itself as a corporation organized under the laws of Indiana, to restrain the levy of a tax assessable only on railroad corporations organized under the laws of Illinois. This court held that the tax was in fact assessed upon a corporation organized under the laws of Illinois, and, therefore, dismissed the case on the merits. No intimation was made that there were two corporations for any practical purpose of determining rights or liabilities. Obviously, if the statutes of Illinois constituted a charter as distinguished from a mere license to an existing corporation to operate in Illinois, the corporation chartered was none the less subject to the tax law of Illinois because it was also a corporation under the laws of Indiana.

In *Muller* v. *Dows*, 94 U. S. 444, the court held a single decree sufficient to foreclose a mortgage of property situated partly in Missouri and partly in Iowa and owned by a corporation formed by the consolidation of two corporations of the same name and organized under the laws of those states respectively.

The consolidation was under general statutes, providing that a railroad connecting with another railroad outside the state might "merge and consolidate the stock of the respective companies, making one joint-stock company of the railroad thus connected." The result of this merger the court described by saying:

> "The two companies became one. But in the State of Iowa that one was an Iowa corporation, existing under the laws of that State alone." p. 447.

The merger thus effected by authority of statute in the case of these railroad corporations is the same in effect as incorporation by each of two states of the same individuals as a private corporation to carry on a single enterprise.

This court has not been called upon in any other case actually to determine the effect of such a double incorporation, except for purpose of federal jurisdiction, but the inferior courts of the United States and some state courts have made decisions dealing with the effect on actual rights and liabilities.

In *Uphoff* v. *C. St. L. & N. O. R.R. Co.*, 5 Fed. Rep. 545, the court clearly intimated that a judgment against a so-called "interstate" corporation was binding upon it as a whole.

In *Horne* v. *B. & M. R.R. Co.*, 18 Fed. Rep. 50, the court held that the Boston & Maine Railroad Company, a corporation chartered both in Massachusetts and New Hampshire, could be sued in New Hampshire as a citizen of that state for personal injuries inflicted in Massachusetts. Judge Lowell in his opinion said:

> "I will only add that the fiction which makes two or three corporations out of what is, in fact, one, is established only for the purpose of giving each state its legitimate control over the charters which it grants, and that the acts and neglects of the corporation are done by it as a whole. It is immaterial, in considering the question of jurisdiction, that the damage complained of was suffered within the limits of Massachusetts, and that the judgment will bind the corporation in that state." p. 52.

In *Nashua & L. R.R. Co.* v. *Boston & L. R.R. Co.*, 19 Fed. Rep. 804, the court said that in the case of such a consolidated corporation each of the entities, when properly sued, represented all.

In *Burger* v. *Grand Rapids & I. R.R. Co.*, 22 Fed. Rep. 561, 564, the court said that a judgment against the corporation described as organized under the laws of one of the states creating it would be binding and enforceable against it as a corporation of the other.

Where a corporation was organized both in New York and Pennsylvania, it was held that a judgment recovered against it in the former state as a corporation of that state could be sued upon in the latter in an action against it as a corporation of the latter and could not be collaterally impeached. *Union Trust Co.* v. *Rochester & P. R.R. Co.*, 29 Fed. Rep. 609.

The case of *Louisville N. A. & C. Ry. Co.* v. *Louisville Trust Co.*, 174 U. S. 552, is not inconsistent with these decisions, or with the principles contended for. In that case a corporation describing itself as a corporation of Indiana brought suit against citizens of Kentucky to cancel a guaranty purporting to be made by it on certain bonds, alleging that the guaranty was made without authority of law The defendants by answer (75 Fed. Rep. 433) alleged that the plaintiff was a citizen of Kentucky, and that, therefore, the court had no jurisdiction, and that the guaranty was duly authorized by law. It appeared that in 1873 the plaintiff railroad corporation was organized in Indiana. In 1880 an act was passed in Kentucky enacting that the plaintiff described as a corporation organized in Indiana be constituted a corporation. In 1881 the plaintiff corporation and an Illinois corporation consolidated pursuant to the laws of those two states. In 1882 the legislature of Kentucky by amendment of its act of 1880 authorized the corporation therein named to guarantee bonds of railroads constructed in Kentucky. In 1888 an agreement was made between the Ohio Valley Improvement Company and the Louisville, New Albany and Chicago Railway Company, a

corporation organized and existing under the laws of the states of Indiana and Kentucky, pursuant to which the guaranty in question was given.

The Circuit Court and Circuit Court of Appeals upheld the jurisdiction of the federal court. The Circuit Court (69 Fed. Rep. 431) held that the validity of the guaranty was to be determined by the law of Indiana, and that the guaranty was invalid for failure to comply with the requirements of that law. The Circuit Court of Appeals (75 Fed. Rep. 433) held that by the law of Kentucky the guaranty was valid, but that the plaintiff as a corporation of Indiana was not bound by the guaranty, and consequently that the bonds should be stamped with notice that the guaranty was binding only on the Railway Company "a corporation of Kentucky" and not binding on it "a corporation of Indiana and Illinois."

The case was brought before this court on a writ of *certiorari*. The court declined to consider whether the effect of the Kentucky statute was to create a corporation or not, on the ground that if such was its effect nevertheless the corporation having been first created in Indiana was "for the purposes of jurisdiction of the courts of the United States a citizen of Indiana." 174 U. S. 563. Upon the merits this court held that the Circuit Court of Appeals erred in undertaking to declare a liability against the Railway Company "a corporation of Kentucky." The court said:

> "Apart from the question whether it was a corporation of Kentucky, and from the difficulty of treating the negotiable guaranty upon each bond as itself divisible, binding the guarantor as a corporation of one State, and not binding it as a corporation of another State, there is an insurmountable objection to the decree in its present form.
>
> "The Louisville, New Albany and Chicago Railway Company is a party to this suit as a corpora-

> tion of Indiana only, and not as a corporation of Kentucky. It could not, either as a corporation of both States, or as a corporation of Kentucky only, have brought this suit against corporations and citizens of Kentucky in the Circuit Court of the United States for the District of Kentucky, without ousting the jurisdiction of the court." 174 U. S. 576.

The court decided as to jurisdiction only that a corporation which had originally been created in Indiana could sue as a citizen of that state whether it afterwards became a corporation under the laws of another state also or not. The court decided as to the merits only that a corporation which elected to sue as a corporation of one state only could not ask a determination of rights or liabilities that it might have under the statutes of another state granting it a charter. The court indeed said:

> "It necessarily follows that the rights and liabilities, if any, that it may have as a corporation of Kentucky, or as a corporation of Illinois, cannot be adjudicated in this case; and that the decrees, both of the Circuit Court and of the Circuit Court of Appeals, so far as regards the Louisville Banking Company, must be reversed, and the case remanded to the Circuit Court with directions . . . . that an injunction be issued against bringing suit upon the guaranty on these bonds against the Louisville, New Albany and Chicago Railway Company, a corporation of Indiana, and that there be stamped on these bonds the following word: 'This guaranty is not binding on the Louisville, New Albany and Chicago Railway Company, a corporation of Indiana, and is to that extent cancelled, without prejudice to the rights or liabilities, if any, that it may have as a corporation of Kentucky, or as a corporation of Illinois." 174 U. S. 577.

This language refers, however, only to the matter which was before the court. The real difficulty in the case was

the conflict of laws between Indiana and Kentucky. The plaintiff asserted its existence solely as a corporation organized under the laws of Indiana and sought to repudiate the guaranty as unauthorized by the franchise granted by that state. The defendants, on the other hand, asserted that as the charter granted by Kentucky authorized the guaranty the plaintiff was bound. Clearly, the Kentucky charter could not make valid in Indiana or as to property of the corporation in Indiana what by the laws of Indiana was invalid. Therefore, the plaintiff, so far as it was acting under its Indiana charter, was entitled to the relief prayed, and as it had invoked the aid of the court only in respect to its franchise in Indiana, by describing itself only as a corporation of that state the case called for no decision as to whether the guaranty could be effectual so far as the affairs of the corporation were regulated by the Kentucky charter, and this court accordingly modified the decree appealed from so far as it declared the existence of such a liability.

It is clear that the court intended to leave open the question whether a dual set of liabilities could exist. The decision was arrived at expressly apart from "the difficulty of treating the negotiable guaranty upon each bond as itself divisible, binding the guarantor as a corporation of one State, and not binding it as a corporation of another State." p. 576. If for purposes of contracting liabilities and determining rights two distinct corporations existed, there could be no difficulty in treating the guaranty as divisible.

While, therefore, by its language the court seems to deal with the case as a question of parties in the same manner as it might have done if instead of the corporation two natural persons were involved, the case called for no decision and the actual point decided by the court involved no doctrine that there were two entities for all purposes independent.

The case is of too exceptional a nature to warrant extending the decision of the court beyond the actual point involved. The individuals making up the body of stockholders had been granted franchises by two independent sovereignties. They had done an indivisible act in carrying out a single contract in making which they purported to act under both franchises. In law they were authorized to do this by the one franchise and not by the other. Clearly, a different rule may be applicable to such a case from the rule applicable to the ordinary case of rights and liabilities equally effectual under either franchise. The question of what rule should be applied this court declined to decide. The relief asked by the plaintiff called for no such decision; had it required a decision of this point the court must have decided the preliminary point which was expressly left open of whether the Kentucky statute amounted to a charter or only to a license to do business in the state.

In its ultimate analysis a corporation is the aggregation of individuals who compose it. The natural persons who are the stockholders bear its losses and subject to restrictions of limited liability are responsible for its obligations. The corporation is only the fictitious entity representing the franchise given to the individuals enabling them the more conveniently and the more safely to conduct their affairs. Where the same individuals are incorporated in each of two states to carry out the same enterprise, partly in the one state and partly in the other, and the organization in each state is identical, with a single capital stock, a single series of shares represented by a single set of certificates, identical officers chosen at a single election undistinguishable as an election under the laws of one state rather than of the other, there may for some purposes and as a convenient means of adjusting some rights be said to be two corporate entities, but it is

a mere meaningless splitting of hairs to describe the act of the stockholders collectively done in pursuance of all their franchises as separable. Whenever and wherever the question is one of procedure or of form or of determining the franchises that the corporation can exercise in a particular state, the fiction of a corporate entity replacing the stockholders in their collective capacity may conveniently and properly be used, but when a question of substantive rights is involved it becomes important to see that the fiction is not misused so as to produce a miscarriage of justice.

Speaking of such corporations, Mr. Morawetz says:

> "But although each charter of a company incorporated by different States can operate as a grant of franchises only within the jurisdiction of the State enacting it, yet the company itself does not on that account cease to be one company, having one undivided enterprise. A company thus constituted is in reality but a single corporation, formed by agreement of its members for the purpose of carrying on business in a corporate capacity in several States. . . . . For the purposes of acting, contracting, suing, and being sued, a company incorporated under the laws of several states is a single corporation, both in fact and in law." Morawetz on Private Corporations, 2d Ed. Sects. 995, 996.

The views thus expressed had already in substance been affirmed by this court in *Railroad Co.* v. *Harris*, 12 Wall. 65. The court there said that there was no reason why several states by appropriate legislation might not "unite in creating the same corporation or in combining several pre-existing corporations into a single one," or why one state might not "make a corporation of another State, as there organized and conducted, a corporation of its own." p. 82.

The theory of two separate corporations existing under the circumstances above described for purposes of action and enforcement of rights and liabilities is wholly inconsistent with the decisions of this court already referred to, as well as with any sound and reasonable administration of justice.

If there are two corporations, clearly both must act in order to bind the entire corporate property, and the action of each must be taken in the same way as if it were an independent corporation of the state by which it was created; yet this court decided that a single stockholders' meeting held in one state was sufficient authority for corporate action, and said it was immaterial whether by the laws of the other states stockholders of corporations must meet within the state or not.

Graham v. *Boston, Hartford & Erie R.R. Co.*, 118 U. S. 161.

If there are two corporations the defense of non-joinder of one would be good in a suit brought to enforce an obligation binding on the entire enterprise. Yet this court held that a suit could be maintained by one of the "dual corporations" without joining the other to enforce an obligation arising in the state by which the other was created.

Nashua & L. R.R. Co. v. *Boston & L. R.R. Co.*, 136 U. S. 356.

If there are two corporations both would be necessary parties to a foreclosure suit. Yet this court held that a foreclosure suit against the corporation as a corporation of one state only could be maintained and a foreclosure decreed of the property in both states.

Muller v. *Dows*, 94 U. S. 444.

In the very recent case of *St. Louis & San Francisco Ry. Co.* v. *James*, 161 U. S. 545, the question of liability where such a corporation was operating an interstate railroad was incidentally raised. The suggestion was made in a dissenting opinion that there were two corporations each of which was liable on the ground of partnership or agency. That, however, is obviously resorting to a fiction to avoid the difficulty created by a too liberal application of another fiction. Even if in cases of tort the liability which must admittedly exist might be based on such a theory, the application of the theory to contracts and contract liability involves insuperable difficulties.

The case at bar is a striking example of the practical necessity of adopting the principles above laid down. The mortgage out of which the present litigation arose was made by the Alabama and Georgia Manufacturing Company with no designation of the place of its incorporation, and purported to convey all the property in Georgia and in Alabama. It was executed in behalf of the corporation by officers who were the only officers of the corporation whether an organization of Alabama or of Georgia. Either the persons who so executed the mortgage, the same persons who are contesting the present suit, intended that it should be and believed that it was the act of the owner of the property, or they perpetrated a deliberate and intentional fraud on the bondholder to which they now ask this court to give effect.

If by a single act the officers bound the corporation both as an Alabama and as a Georgia corporation, it is a senseless distinction to insist that the single obligation can be enforced only by a separate proceeding against each of the supposed legal entities, proceedings which would be begun by service upon and be resisted by the same individuals in each case, the officers of the dual

corporation, and would affect the interests of the same persons in each case, the common body of stockholders, and would be paid for from a common treasury.

A very slight consideration shows the impracticable nature of any theory of divisibility. A single business is carried on under a single name, by a single management and body of officers. Debts are contracted and credits accrue. If a judgment is recovered against the corporation described as organized in one state and is not binding upon it as an organization of the other, how is it to be determined if an attempt is made to obtain satisfaction from debts due to the corporation, whether such debts are due to it in one capacity or the other? No theory of partnership or agency will avail, because a judgment against a single partner is not to be satisfied from partnership property, nor is a judgment against a principal to be satisfied from the property of his agent though the agent might also be liable on the same cause of action.

Examples of the confusion arising from such a doctrine might be multiplied indefinitely. The only possible solution of the problem is to recognize what is the truth, that where there is in fact a single real body there is in law also a single entity so far as rights, liabilities and their enforcement are concerned; that for special purposes it is proper and desirable to distinguish as to the place of creation of the corporation, but that whatever binds the individuals making up the body of stockholders in their collective capacity as a corporation of one state is equally binding upon them in their collective capacity as a corporation of the other state.

II.

The cases as to the jurisdiction of the Federal Courts depend upon a wholly distinct question from that here under consideration.

Much reliance has been put by the respondents, and apparently by the judges of the Circuit Court of Appeals, on the decisions of this court relating to federal jurisdiction of suits by or against so-called interstate corporations. Those cases have no bearing on the present question.

The position of such a corporation as to jurisdiction of a federal court appears first to have arisen in the case of *Ohio & Mississippi Railroad Co.* v. *Wheeler*, 1 Black 286. There a corporation which had been chartered by the state of Indiana, and also by the state of Ohio sued a citizen of Indiana in the Circuit Court of the United States for the District of Indiana. The defendant objected to the jurisdiction on the ground that the plaintiff was also a citizen of Indiana. The objection was sustained. Chief Justice Taney adverted to the rule then recently established that in suits by and against corporations all stockholders were for purposes of determining the jurisdiction of the federal courts conclusively presumed to be citizens of the state by which the corporation was chartered and said that in the application of this rule to the case of a corporation chartered alike by two states the fictitious legal entity created by the state in which the proceeding was brought could alone be recognized. In the course of his opinion the learned Chief Justice said:

> "But the legal entity or person, which exists by force of law, can have no existence beyond the limits of the State or sovereignty which brings it into life and endues it with its faculties and powers. The

President and Directors of the Ohio and Mississippi Railroad Company is, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio, and they cannot be joined in a suit as one and the same plaintiff, nor maintain a suit in that character against a citizen of Ohio or Indiana in a Circuit Court of the United States." 1 Black 297, 298.

Dissociated from the facts of the case this language might seem to imply the existence of two corporations distinct for all purposes. But it cannot fairly be given any such extensive meaning. It is not true that a corporation does not exist as a legal entity outside the state of its creation. On the contrary, it is settled law in this court that in the absence of an express prohibition the existence of a corporation created by one state will by the general law of comity prevailing among the states of the Union be recognized in every other state.

Railroad Co. v. *Harris*, 12 Wall. 65, 81–83.
Cowell v. *Springs Co.*, 100 U. S. 55.
Christian Union v. *Yount*, 101 U. S. 352.

Had the Ohio & Mississippi Railroad Company been organized only under the laws of Ohio it could have maintained its action. Clearly, the Chief Justice by the language quoted meant no more than that a corporation having an existence under the laws of Indiana could not, for the purpose of maintaining an action in the Circuit Court of the United States in Indiana, rely upon the charter granted to it in Ohio and disregard its existence under the law of Indiana. This is the view of the case taken by this court in later decisions.

Since the decision above referred to this court has had frequent occasion to consider the position, as to jurisdiction of the federal courts, of corporations chartered by more than one state.

Distinguishing between cases where there has been an actual incorporation in more than one state, and cases in which a corporation of one state has been granted authority to operate in another, even though coupled with a statutory declaration that by so doing it became a domestic corporation of the state granting such authority, this court has held that in the latter class of cases the corporation was everywhere and for all purposes a corporation of the state granting the original charter.

Railroad Co. v. *Harris*, 12 Wall. 65.
Goodlett v. *Louisville & N. R.R. Co.*, 122 U.S. 391.
Martin's Adm. v. *B. & O. R.R. Co.*, 151 U.S. 673.
St. L. & St. F. Ry. Co. v. *James*, 161 U. S. 545.
St. J. & Gr. I. R.R. Co. v. *Steele*, 167 U. S. 659.
Southern Ry. Co. v. *Allison*, 190 U. S. 326.

And that in the former class of cases, where there were really two incorporations, the corporation was for jurisdictional purposes to be deemed a corporation of that one of the chartering states in which it was sued.

Railway Co. v. *Whitton*, 13 Wall. 270.
Memphis & C. R.R. Co. v. *Alabama*, 107 U. S. 581.
Pennsylvania R.R. Co. v. *St. Louis, A. & T. H. R.R. Co.*, 118 U. S. 290.

In *Louisville N. A. & C. Ry. Co.* v. *Louisville Trust Co.*, 174 U. S. 552, already discussed at length, this court held that a railroad corporation originally chartered in Indiana could sue in the Circuit Court of the United States for the District of Kentucky, although a subsequent act of Kentucky purported to make it also a corporation of Kentucky. This was put upon the ground that the original charter in Indiana could not be affected by the subse-

quent act of the Kentucky legislature, whether that act created a corporation or merely conferred powers upon an existing foreign corporation—a question of construction that the court deemed it unnecessary to decide.

In *Nashua & L. R.R. Co.* v. *Boston & L. R.R. Co.*, 136 U. S. 356, this court held in like manner that a corporation first chartered in New Hampshire could, notwithstanding a subsequent incorporation in Massachusetts, sue as a citizen of New Hampshire in the Circuit Court of the United States for the District of Massachusetts.

Both of the foregoing cases appear to go upon the ground that a corporation having been formed under the laws of a state, the subsequent act of another state cannot limit the privilege of the corporation to deem itself a citizen for jurisdictional purposes of the state of its origin. If for jurisdictional or any other purposes this involved saying that there existed another distinct legal entity having independent rights, very anomalous and unsatisfactory results must follow.

A corporation created by the laws of a state is deemed a citizen of that state for purposes of jurisdiction by a legal fiction according to which all its stockholders are conclusively presumed to be citizens of that state. If the same persons have been created a corporation by the laws of two states, and two entities are to be recognized at the same time, this fiction would involve making both corporations parties and conclusively presuming in one proceeding that the same persons were citizens of each of two states. Some rule is necessary to avoid this anomaly. The requirement is met by recognizing, for purposes of jurisdiction, two separate entities, but refusing to recognize more than one of the two in any one proceeding. In the Nashua case this court adopted that course, refusing to sustain the objection taken that there was a Massachusetts corporation which must be joined.

In determining of what state such a dual corporation shall in any particular proceeding be deemed a citizen, the main consideration really is to secure a proper distribution of jurisdiction between the states which have created the corporation, and proper control by each state over the charter it has granted. Obviously, this will best be accomplished by recognizing for jurisdictional purpose in a proceeding against the corporation in either state only the entity created by that state. The rule apparently established by this court, as to the effect of priority of creation by one state as authorizing the corporation as a plaintiff to claim recognition as a citizen of that state, does not conflict with the general principles established by the other cases.

III.

It is immaterial whether the charter of the Alabama and Georgia Manufacturing Company expired before the foreclosure decree was rendered or not.

The decree having been rendered without objection cannot be attacked collaterally on this ground.

Assuming that the Alabama and Georgia Manufacturing Company was a party to the foreclosure suit only in its capacity as a corporation of Georgia, so that the expiration of its Georgia charter had the effect of a dissolution of the corporation that was a party to the suit, the decree was none the less valid against collateral attack.

The dissolution of a corporation pending a suit can have no greater effect in invalidating a decree than the death of a natural person under like circumstances. Mr. Justice Story, speaking of such a case, said:

> "Now I cannot distinguish between the case of a corporation and the case of a private person dying *pendente lite*."
>
> *Greeley* v. *Smith*, 3 Story 657, 658.

This statement was quoted with approval by Mr. Justice Field in *National Bank of Selma* v. *Colby*, 21 Wall. 609, 615.

If an individual defendant dies *pendente lite* the suit abates, but if the death is not called to the attention of the court and a judgment or decree is entered against the deceased defendant that judgment or decree while it may be reversible for error upon proper proceedings is not void and cannot be attacked collaterally.

In *New Orleans* v. *Gaines's Administrator*, 138 U. S. 595, in a suit to recover from the city of New Orleans rents and profits for which it was liable, objection was taken to the effect of certain judgments recovered in prior proceedings against persons claiming under the city on the ground that the judgments were recovered after the death of the defendants. This court held that the judgments could not be collaterally attacked on this ground.

> "A judgment rendered after a defendant's death, without the plaintiff's fault, is not void. The irregularity or error may be cured by entering it *nunc pro tunc* of a date prior to the defendant's death; and even this has been held not necessary in a collateral proceeding." 138 U. S. 612.

Referring to the effect of delay in raising the question, Mr. Justice Bradley, speaking for the court said:

> "But it does not lie in the mouth of the city of New Orleans to raise the question, at the present stage of the case, after the decree passed by the Circuit Court and an appeal to this court, and a remand of the cause to the Circuit Court for further proceedings, during all which time this objection could have been made, but never was made until the matter came before the master on the last reference. We think that the appellant was estopped from raising the objection, and that it cannot be urged now." 138 U. S. 612.

Certainly in the present case there is every ground for such an estoppel as the persons acting for the corporation, now alleged to have been defunct, continued to take part in the proceedings after March 21, 1896, the date of the expiration of its charter. The same corporation, now alleged to have gone out of existence, joined in the petition for appeal filed December 2, 1898 (Rec. p. 452), in the assignment of errors (Rec. p. 453) and in the bond (Rec. p. 470), and after the final decision of the Circuit Court of Appeals joined in an application to this court for a writ of *certiorari*, which was denied (175 U. S. 726), and later in an appeal which was dismissed (184 U. S. 297).

In *Reid* v. *Holmes*, 127 Mass. 326, the same doctrine as to the effect of a judgment entered after the decease, *pendente lite*, of a defendant was laid down.

See also:

Bridges v. *Smyth*, 8 Bing. 29.
Yaple v. *Titus*, 41 Pa. St. 195.

The same principle applies where a plaintiff dies.

Powell v. *Washington*, 15 Ala. 803.

Cases in which the action was begun after the death of the defendant are of course wholly different. The court in such a case never acquires jurisdiction, and all the proceedings are a nullity.

In *Reid* v. *Holmes*, 127 Mass. 326, the late Mr. Justice Gray, then Chief Justice of the Supreme Judicial Court of Massachusetts, said:

> "The case is wholly different from that of a judgment rendered in an action originally brought against a person already dead, or of a decree granting administration on the estate of a living person; for in each of those cases the court never acquired jurisdiction." 127 Mass. 328, 329.

EIGHTH.

NO EVIDENCE WAS NECESSARY TO JUSTIFY THE COURT IN ENTERING THE DECREE.

I.

No material issue of fact was raised by the answer.

The answer filed by the defendants, now the appellees (Rec. p. 505), alleged:

first, that bringing the Alabama suit was not a contempt of court; that the defendants were corporations of Alabama, and the Alabama and Georgia Company also a corporation of Georgia, but without any merger by action of the two states; that the Alabama and Georgia Company as a Georgia corporation only was made a party to the foreclosure suit; that as matter of law the foreclosure decree was not conclusive on them by reason of the citizenship alleged and because part or all the property was in Alabama;

second, that the court had no jurisdiction because the bill was not in fact ancillary, and there was not the necessary diversity of citizenship, and the forcelosure suit was not still pending in the court;

third, that the suit was barred by the United States Revised Statutes, Section 720;

fourth, that the plaintiff, the present appellant, had appeared and answered in the Alabama suit before filing the bill in this suit;

fifth, that the Circuit Court had no jurisdiction of the original foreclosure suit because the plaintiff therein and the Huguley Company were both citizens of Alabama;

sixth, that the Circuit Court had no jurisdiction to make a sale of the mortgaged property because the Huguley Company was a corporation of Alabama and the charter in Georgia of the Alabama and Georgia Company expired before the decree was made;

seventh, that the court had no jurisdiction to make the sale because all the mortgaged property was in Alabama;

eighth, that the court had no jurisdiction to make a sale of so much of the mortgaged property as was in Alabama, and that part of it at any rate was there situated;

ninth, that the Alabama and Georgia Company was chartered in Alabama and also received a charter in Georgia which expired March 21, 1896; that the Huguley Company is a corporation of Alabama; that these two corporations are the plaintiffs in the Alabama suit; that the Alabama suit was at the regular term of that court held on June 10, 1901, submitted without knowledge of any order in this proceeding to the decision of that court on demurrers;

tenth, that the Alabama suit seeks an accounting, but the plaintiffs therein expect to credit any sums paid in under the accounting in the Georgia suit; that the Alabama suit was instituted in good faith and not to annoy or unnecessarily to prolong the litigation.

The only matters of fact contained in these allegations are the place of incorporation of the two companies, the appearance and pleading of the present appellant in the Alabama suit, the expiration of the Georgia charter of the Alabama and Georgia Company on March 26, 1896, the location of all or a part of the mortgaged property in Alabama, the submission of the Alabama suit on demurrers without knowledge of any order having been made in this suit, the intention of the plaintiffs in the

Alabama suit to allow credit for sums allowed them in the accounting in Georgia. All the other substantial allegations of the answer are merely conclusions of law or statements of evidence.

None of the facts alleged constitute any defence or raise any material issue.

(1) It has already been shown that wherever the Huguley Company was incorporated it was a party to and bound by the decree in the foreclosure suit. No question of dual corporations arises as to it.

(2) The facts as to the incorporation of the Alabama and Georgia Company are equally immaterial. If, as has been argued, the decree was binding on that corporation as a corporation of both states, the dual incorporation is not material. If not so binding, yet as the Alabama and Georgia Company had no interest in the foreclosure of the equity of redemption, and consequently no interest in the Alabama suit or in this suit, the fact is immaterial, and the suit is equally maintainable at least against the Huguley Company.

(3) The appearance and pleading of the present appellant in the Alabama suit and the alleged submission of the case on demurrers does not prevent the maintenance of this suit. It is not alleged and cannot be inferred that this appellant joined in any submission of the case even if that would be material. There is no principle of law by which the appellant was bound to invoke the assistance of the Circuit Court before appearing or pleading in the Alabama suit. The application to the Circuit Court was not a removal or governed by the statutes relating to the removal of suits.

In *French* v. *Hay*, 22 Wall. 250, the ancillary suit was brought after a judgment in the suit sought to be restrained had been recovered and the case taken to the

Supreme Court of Pennsylvania. In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, the ancillary suit was brought to prevent enforcement of a replevin bond, proceedings on which were being taken as the result of a judgment recovered in a state court.

(4) The location of all or a part of the real estate in Alabama is not material. It has already been shown that the Circuit Court for the Northern District of Georgia could foreclose the mortgage as to property partly or wholly in Alabama. It was alleged in the original foreclosure suit that the property of the Alabama and Georgia Company was conveyed to the trustees for the bondholders by deed of trust made part of the bill (Rec. p. 2). The deed of trust described a part of the property as in Georgia and a part as in Alabama. (Rec. p. 4.) The answer contained no denial of the propriety of this description of the property; no allegation that the property was exclusively in Alabama. It has already been shown that the Huguley Company at least cannot now be heard to allege that the property was wholly in Alabama for the purpose of attacking the jurisdiction of the court. The original foreclosure bill contained allegations which if true gave the court jurisdiction; these allegations were not denied. Having submitted to the jurisdiction of the court in a suit of which on the face of the bill the court had jurisdiction the Huguley Company could not collaterally attack for want of jurisdiction of the subject matter the decree rendered.

(5) The intention of the defendants in this suit to give proper credits upon an accounting in the Alabama suit is of course not a defence and not a material or issuable allegation.

II.

The decree could properly be entered on a hearing upon bill and answer.

The bill of complaint had annexed as an exhibit made part of the bill a copy of the bill filed in the Alabama court (Rec. pp. 478, 486). The bill also stated that the proceedings in the foreclosure suit appeared on the records of the court "which are hereby referred to and made a part of this bill of complaint, with leave to refer thereto as often as may be necessary." (Rec. p. 478.) The answer had annexed to it a copy of the answer filed in the Alabama state court and sundry other exhibits.

On hearing upon bill and answer no evidence is required. All facts in the bill properly pleaded and not put in issue by the answer are taken to be true, and all facts in the answer properly pleaded are taken to be true.

In the case of *In re Sanford Fork and Tool Company*, 160 U. S. 247, Mr. Justice Gray delivering the opinion of the court enumerated the courses open to a plaintiff in equity on the coming in of the defendant's answer and described one of those courses as follows:

> "Fourth. A demurrer to the answer is unknown in equity practice. But the plaintiff may set down the case for hearing upon bill and answer; whereupon all the facts alleged in the bill and not denied in the answer, as well as all new facts alleged in the answer, are deemed admitted, as upon a demurrer to an answer in an action at law." 160 U. S. 257.

This admission does not of course extend to conclusions of law pleaded either in the bill or answer, any more than an admission by demurrer.

Dillon v. *Barnard*, 21 Wall. 430, 437.

Upon a hearing of this cause on bill and answer the court had before it everything that was necessary to dispose of the case. It has been shown that the only facts denied by the answer and the only new facts alleged in the answer were immaterial. The substantial allegations of the bill, with the record in the foreclosure suit which constituted a part of the bill through incorporation therein by reference as well as by reason of the ancillary nature of the proceedings, set forth everything required to support the plaintiff's case. Since none of those facts material to the case were denied, no proof was required and the Circuit Court rightly entered its decree.

NINTH.

IF AND SO FAR AS ANY EVIDENCE WAS REQUIRED THERE WAS SUFFICIENT BEFORE THE COURT TO UPHOLD THE DECREE.

I.

All the facts alleged in the bill necessary to uphold the decree, not expressly admitted, were contained in the record of the foreclosure suit.

If it is to be taken that the cause was not heard on bill and answer but on proofs, then the court was equally justified in entering the decree because there was evidence before it, in the record of the foreclosure suit, establishing all facts alleged in the bill and not expressly or impliedly admitted by the answer.

The essential allegations of the bill were: the bringing of the foreclosure suit, the proceedings had therein and

the result; the bringing of the suit in the state court of Alabama; the identity of the defendants in the foreclosure suit and of the plaintiffs in the state court.

The record of the foreclosure suit contains all the facts as to the bringing of that suit, the pleadings therein, and its termination.

The bill in this suit has annexed to and made a part of it (Rec. p. 478) a copy, Exhibit B, (Rec. p. 486) of the bill in the Alabama court. The answer in this suit contains no denial of the allegations of the bill as to the Alabama suit, but impliedly, at least, admits the bringing of the suit in Alabama, and annexes a copy of the answer filed in that suit (Rec. p. 510). The plaintiff could not be required therefore, to produce any evidence as to the proceedings in Alabama.

The answer filed to the present bill establishes the relation of the Huguley Manufacturing Company to the preceding litigation. The first paragraph of the answer sets up that "said Huguley Manufacturing Company" was alleged in the foreclosure suit to be a corporation created under the laws of Georgia, but that it was in fact incorporated only in Alabama. (Rec. p. 505.) The fifth paragraph sets up want of jurisdiction in the foreclosure suit because the Huguley Manufacturing Company was a corporation of Alabama, and, therefore, a citizen of the same state as the plaintiff in the foreclosure suit (Rec. 507). The sixth paragraph (Rec. p. 508) sets out in detail the position of the defendants, viz: that the Alabama and Georgia Company is a corporation to which a charter was granted by both Georgia and Alabama, and the Huguley Company a corporation organized only in Alabama, and that in the foreclosure suit the Alabama and Georgia Company was sued as a corporation of Georgia, and the Huguley Company, there being according to the answer only one such corporation, was sued

under the designation of a corporation of Georgia. These allegations can have no other meaning than that the Huguley Company now before the court, and a plaintiff in the Alabama suit, was before the Circuit Court in the original foreclosure suit, but was then misdescribed as a corporation organized under the laws of Georgia. To whatever benefit can be derived from the legal effect of such misdescription the defendants are entitled, but no question of fact is involved. The case is to be disposed of on the basis that this allegation as to the Huguley Company is true.

The present bill expressly alleges in the first paragraph (Rec. p. 473) that the Alabama and Georgia Company consists of a single body of stockholders and officers engaged in carrying on a single enterprise, if organized under the laws of both Georgia and Alabama. The answer does not profess to controvert this position, but merely alleges, a conclusion of law, that by reason of such double incorporation there are two legal entities and that the proceedings in the foreclosure suit to which one was a party in no wise affect the other. If any proof was required that there is but a single body of stockholders engaged in a single enterprise, the record in the foreclosure suit and in this suit furnishes such evidence.

II.

The record in the foreclosure suit before the court was competent evidence.

It has already been shown that the record in the foreclosure suit was in fact incorporated by reference in the bill and being in no wise controverted must be given the same effect as if set forth at large.

Assuming, however, that the record is to be treated as a proof, the result is the same. The bill was filed as an

ancillary proceeding and was in fact a part of or a continuation of the original foreclosure suit. Clearly, then, the record in that suit was properly before the court for all evidential purposes in this suit.

Aside from this, however, the record was competent evidence against the Huguley Company. It sufficiently appears, and indeed is admitted, as has been shown, that the Huguley Company defendant in this suit and the Huguley Company defendant in the foreclosure suit are identical. The record in the foreclosure suit constitutes, therefore, an adjudication against the Huguley Company of everything that was there in issue or might have been in issue. The plaintiff as purchaser of the property sold in that suit was a privy and so far a party as to be bound by the proceedings, and the adjudication is equally binding in his favor.

See *Blossom* v. *Railroad Co.*, 1 Wall. 655.
Kneeland v. *Am. L. & T. Co.*, 136 U. S. 89.
Central Nat. Bk. v. *Hazard*, 30 Fed. Rep. 484.
Gunn v. *Wades*, 62 Ga. 20.
Shirley v. *Fearne*, 33 Miss. 653.

Finally, it is not necessary to rely upon the record in the foreclosure suit as a binding adjudication to support the present bill. The record in the foreclosure suit was evidence in favor of any person in any controversy in which the facts were material, to prove that a bill was brought and that the successive proceedings shown by the record were had. The identity of the defendant in the proceedings shown by such record and the defendant in the present suit appears sufficiently to show that the proceedings of the court relate to the present defendant. It will appear from a consideration of the bill in the present suit that these proceedings are the only facts for

proof of which it is necessary, if indeed any such necessity exists, to rely upon the record in the foreclosure suit as evidence.

The allegations of the bill may be classified and described as follows:

Paragraph I of the bill (Rec. p. 473) alleges:
the place of incorporation of the defendants and the identity of the dual corporations, if any, the citizenship of the corporations and the description of the property owned by them.

All allegations of citizenship are immaterial except to identify the corporations, because the bill is ancillary; all allegations as to the dual incorporation, including identity of officers, etc., are inapplicable to the Huguley Company, and as to the Alabama and Georgia Company are not denied by the defendants; the property is described in the bill in the Alabama suit (Rec. p. 486) and this description is identical with the description in the original foreclosure bill (Rec. pp. 2, 5).

Paragraph II of the bill (Rec. p. 474) alleges:
(a) execution of the mortgage, indivisible character of the property, acquisition of title to equity by the Huguley Company, adverse interest of W. T. Huguley and death of Yancey;

(b) default in the condition of the mortgage, filing of the foreclosure bill, service of process, and decree *pro confesso* against W. T. Huguley.

The execution of the mortgage, acquisition of title by the Huguley Company to the equity of redemption and death of Yancey are common ground; the Alabama suit asserts and is founded on the mortgage and acquisition of title to the equity of redemption and alleges the death of Yancey (Rec. pp. 487, 488).

The adverse interest of W. T. Huguley is immaterial, because wrongly joining him as a defendant is at most only error and does not impeach the decree. It is immaterial in this proceeding whether there was a default in the mortgage or not, since there was a decree ordering a sale and it is the title under the decree that the court is to protect; the decree would not be void if there had been no default; therefore, any attack upon the title under the decree on the ground that there was no default must be by direct proceedings in the court rendering the decree.

Paragraph III of the bill (Rec. p. 475) alleges:
proceedings had in the foreclosure suit.

The fact of such proceedings is properly proved by the record and by that only.

Paragraph IV of the bill (Rec. p. 476) alleges:
proceedings had in the foreclosure suit.

The fact of such proceedings is properly proved by the record and by that only.

Paragraph V of the bill (Rec. p. 477) alleges:
that the proceedings appear by the records of the court and refers to the records.

Paragraph VI of the bill (Rec. p. 478) alleges:
the bringing of the suit in Alabama as shown by a copy of the bill in that suit, annexed and referred to, and the nature and object of that bill.

The answer admits the bringing of the suit in Alabama and attaches a copy of the answer filed in that suit. The precise terms of the bill are shown by copy annexed as an exhibit.

Paragraph VII of the bill (Rec. p. 479) alleges:
that the issues which it is sought to raise in the Alabama suit have been or could have been determined in the foreclosure suit.

This is a matter shown by inspection of the record in the foreclosure suit and the bill and answer in the Alabama suit (Rec. pp. 486, 510).

Paragraph VIII of the bill (Rec. p. 479) alleges:

> that part of the mortgaged property was situated in Georgia and part in Alabama, that the Circuit Court had jurisdiction to foreclose all, that no question of jurisdiction was raised in the foreclosure suit, that the Alabama suit is an attempt to relitigate the subject matter of the foreclosure suit and is an improper suit and in violation of the plaintiff's rights as a purchaser, is an attack on the validity of the decree of the Circuit Court, that the plaintiff is entitled to relief by an ancillary suit and that the defendants are represented in the Alabama suit by the same counsel as in the foreclosure suit.

The first allegation it has been shown is not material; the jurisdiction of the Circuit Court and all the other allegations are either conclusions of law or matters determined by an inspection of the record.

It appears from this analysis of the bill that it contains no allegations dependent for proof on the record in the foreclosure suit, of which that record is not competent evidence as against all the world, and no material allegations not sufficiently proved by the record.

III.

If the answer showed any affirmative defence no evidence was necessary to defeat it.

So far as the answer in the present suit denied any allegations in the bill, it has been shown that those allegations were not material even if they were not sufficiently proved by the record in the foreclosure suit. So far as

the answer contained any allegations designed to establish an affirmative defence those allegations were not supported by evidence.

No evidence appears to have been introduced by the defendants (Rec. p. 539). Affirmative allegations in an answer must be supported by proof.

Clarke v. *White*, 12 Pet. 178, 190.
Seitz v. *Mitchell*, 94 U. S. 580.

An answer on oath so far as it gives discovery is evidence in the defendant's favor, because the plaintiff has called for discovery, but so far as the answer introduces new matter the reason does not apply.

Farley v. *Kittson*, 120 U. S. 303, 317.

See also:

Gordon v. *Bell*, 50 Ala. 213.

TENTH.

THE BILL STATED A CLEAR CASE OF JURISDICTION IN EQUITY.

If the Circuit Court had jurisdiction to protect and give effect to its decree rendered in the foreclosure suit, then clearly the bill was within the jurisdiction in equity of the court.

The only possible remedy for the matters set forth in the bill of complaint was by injunction. The possibility of setting up in the Alabama suit the record in the foreclosure suit as a bar is no answer because by the hypothesis the plaintiff in the present suit had a right to

seek relief in the court by which the foreclosure was decreed, and the court which issued the foreclosure decree had a right by ancillary proceedings to protect the title desired therefrom and to give effect to that decree.

The jurisdiction of the Circuit Court over the subject matter of the suit as a proceeding ancillary to the foreclosure carries with it jurisdiction in equity as the only remedy possible. All the cases affirming the existence of jurisdiction over such ancillary proceedings tacitly affirm the existence of jurisdiction in equity.

Dunn v. *Clarke*, 8 Peter 1.
French v. *Hay*, 22 Wall. 250.
Dietzsch v. *Huidekoper*, 103 U. S. 494.
Root v. *Woolworth*, 150 U. S. 401.
Julian v. *Central Tr. Co.*, 193 U. S. 93.

ELEVENTH.

IF THERE WERE ANY IRREGULARITIES OF PROCEDURE THEY WERE WAIVED.

Objection has been suggested to the proceedings in the Circuit Court on the ground that there was no answer filed to the bill which should, therefore, have been taken *pro confesso*, and on the ground that if there was an answer there was no replication.

The case was submitted in the Circuit Court upon the "bill and proceedings in this cause ancillary to the proceedings in the cause lately pending in this court of J. J. Robinson as trustee, etc., against Alabama & Georgia Manufacturing Company, et al., and upon the record in said last-named cause" (Rec. p. 539). A motion had been made several months before to strike out "the answer

filed by the defendants." (Rec. p. 538.) No objection appears to have been taken by the defendants to such submission or hearing.

It is too late to object that the "Answer to Bill and Response to Rule to Show Cause" (Rec. p. 505) was not an answer to the bill. The respondents made no objection to its being treated as such for the purpose of letting the case be heard upon the merits, and in assigning errors on their appeal to the Circuit Court of Appeals expressly described it as their answer to the bill. The eighth assignment of error (Rec. p. 544) was that there was no evidence or proof to support the relief asked for, and that the decree was "rendered upon said alleged ancillary bill and the answer of respondents thereto." An enumeration follows of matters set up in the bill "which were not admitted in the answer of respondents and which were put in issue by the answer of respondents." (Rec. p. 544.)

After going to a hearing upon the bill and answer and record in the foreclosure suit, and taking an appeal expressly recognizing that they had answered the bill, the defendants cannot now deny that the paper filed was an answer.

The respondents are equally precluded from objecting that no replication was filed. If the hearing is deemed to have been upon bill and answer no replication was necessary or proper.

Reynolds v. *Crawfordsville Bank*, 112 U. S. 405.

If the hearing was upon proofs then proceeding to the hearing was a waiver of the want of a replication.

National Bank v. *Insurance Co.*, 104 U. S. 54.

No objection was taken in the Circuit Court or in the errors assigned upon the appeal to the Circuit Court of Appeals on this ground. The objection cannot be taken for the first time in the appellate court.

Clements v. *Moore*, 6 Wall. 299.
Fretz v. *Stover*, 22 Wall. 198.

TWELFTH.

THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF GEORGIA HAD JURISDICTION OVER THE PERSONS OF THE APPELLEES.

I.

Appearing and proceeding otherwise than for the sole purpose of objecting to the sufficiency of the service is a waiver of any defect of service.

Jurisdiction of the subject matter of a suit is dependent upon the powers conferred upon the court. Jurisdiction of the person of a defendant is obtained by service of process or by the voluntary appearance of the defendant in the progress of the cause.

Cooper v. *Reynolds*, 10 Wall. 308, 316.
Rothschild v. *Knight*, 176 Mass. 48, 55.

A voluntary appearance is a waiver of any lack of service or defect in the service or in the venue. Such objections are personal privileges which the defendant may waive, and if he appears to the action he places himself in precisely the same position as if process had been served upon him.

Pollard v. *Dwight*, 4 Cranch 421, 428.
Loomis v. *Wadhams*, 8 Gray 557.

An objection to the jurisdiction for want of service is an objection that must be made at the outset. The defendant cannot, knowing the fact as to defective service, permit the cause to proceed and subsequently raise the objection.

Brown v. *Webber*, 6 Cush. 560, 564.

In *Voorhees* v. *The Bank of the United States*, 10 Peters 449, 473, this court said:

> "It is among the elementary principles of the common law, that whoever would complain of the proceedings of a court, must do it in such time as not to injure his adversary by unnecessary delay in the assertion of his right. If he objects to the mode in which he is brought into court, he must do it before he submits to the process adopted."

If the defendant, not having been legally served so as to be brought into court, sees fit to plead to the merits of the case, or to take any step which invokes the jurisdiction as to any relief that the court can afford, other than a determination of the sufficiency of the process by which it is sought to make him appear, he submits to the jurisdiction for all purposes and cannot thereafter say that he was not properly brought before the court. It is not sufficient that a defendant should object if he does not make his objection a part of the record,

Toland v. *Sprague*, 12 Peters 300, 331,

and it is not sufficient for him to make such objection and at the same time ask the judgment of the court on other objections to the maintenance of the suit going to the merits. If indeed his objection to the court's jurisdiction over his person is overruled, he may proceed to

defend the case on the merits and may by appropriate proceedings save his right to have the judgment of the court as to the jurisdiction over his person reviewed.

Harkness v. *Hyde*, 98 U. S. 476.

The question of waiver is not a question of intention:

> "An appearance which waives the objection of jurisdiction over the person is a voluntary appearance and this may be effected in many ways, and sometimes may result from the act of the defendant even when not in fact intended."
>
> *Wabash Western Railway* v. *Brow*, 164 U. S. 271, 278.

The rule is founded on the ground that if the defendant does any act consistent only with the court having jurisdiction over him he waives the right thereafter to deny that the court has such jurisdiction. By raising for the decision of the court any issue other than that of the sufficiency of the process or of the service of process, the defendant clearly does an act consistent only with the court having jurisdiction over him, since without such jurisdiction the court cannot decide the issue so raised. Whenever, therefore, a defendant by motion to dismiss for want of equity, by demurrer, plea, answer or otherwise, undertakes to set up any defence to a suit, even though in the same pleading he asserts lack of jurisdiction over his person, he waives the personal privilege of questioning the sufficiency of the means by which he has been brought into court.

Harkness v. *Hyde*, 98 U. S. 476.
Fitzgerald Construction Co. v. *Fitzgerald*, 137 U. S. 98.

In *Fitzgerald Construction Co.* v. *Fitzgerald*, this court said:

> "By the amendment to its answer, its plea and motions, the defendant insisted that the court had no jurisdiction to proceed, and thereby declined to stand upon the objection to the service, and submitted itself to the decision of the court in respect to jurisdiction over the subject matter, which jurisdiction, it is entirely clear, the court possessed. These proceedings were taken by defendant after discovering the alleged ground of objection to the service and there was no action on its part confined solely to the purpose of questioning the jurisdiction over the person." p. 106.

In *St. Louis & San Francisco Ry. Co.* v. *McBride*, 141 U. S. 127, the railway company, the defendant below, filed a demurrer on three grounds—want of jurisdiction of the person, want of jurisdiction of the subject matter, and failure to state a cause of action. This court dealing with the contention that the action had been brought in the wrong district said:

> "Assuming that service of process was made, although the record contains no evidence thereof, and that the defendant did not voluntarily appear, its first appearance was, not to raise the question of jurisdiction alone, but also that of the merits of the case. Its demurrer, as appears, was based on three grounds: Two referring to the question of jurisdiction, and the third, that the complaint did not state facts sufficient to constitute a cause of action. There was, therefore, in the first instance, a general appearance to the merits. If the case was one of which the court could take jurisdiction, such an appearance waives not only all defects in the service, but all special privileges of the defendant in respect to the particular court in which the action is brought." p. 130.

In like manner in sustaining the defendant's objection to the service in *Southern Pacific Company* v. *Denton*, 146 U. S. 202, this court emphasized the fact that the objection was taken by a demurrer "for the special and single purpose of objecting to the jurisdiction," and the defence on other grounds was made only after this demurrer had been overruled (p. 206).

The rule that filing a petition for removal in a state court does not waive a defect in the service of process is entirely consistent with these principles. Even though the petitioner does not in his petition expressly restrict the purpose of his appearance, there is no ground for saying that he appears generally or voluntarily submits to the jurisdiction of the court. The petition for removal is the means of exercising a statutory right—the right to have a federal court pass on all matters in controversy including the sufficiency of the service. "Moreover the petition does not invoke the aid of the court touching relief only grantable in the exercise of jurisdiction of the person."

Wabash Western Railway v. *Brow*, 164 U. S. 271, 278.

II.

The appellees appeared and proceeded in this suit without raising any objection to the sufficiency of the service.

The subpœna in the present suit was issued June 10, 1901, addressed to Alabama and Georgia Manufacturing Company, Huguley Manufacturing Company, John M. Chilton, and Welles, Bennett and Welles. On the same day an order was entered that the defendants named in the bill show cause on June 20th why an injunction should not issue, and that in the meantime they be restrained (Rec. pp. 500, 501).

The subpœna and order were served on W. H. Huguley and W. T. Huguley at West Point, Georgia (Rec. p. 501). An acknowledgment of service was also filed in the following form:

> "We accept service of the within notice and summons in lieu of service by the marshal, but reserving all right of objection to the jurisdiction." (Signed) "J. M. Chilton. Welles, Bennett & Welles, Solicitors." (Rec. p. 504.)

On June 21, 1901, (Rec. p. 535) there was filed in the clerk's office a paper headed: "Answer to Bill and Response to Rule to Show Cause" (Rec. p. 505) signed by "King & Spalding, J. M. Chilton, Welles, Bennett & Welles, Solicitors for Respondents" (Rec. p. 509). This paper is entitled in the suit, is addressed to the court and then reads:

> "Comes the Alabama & Georgia Manufacturing Co., and the Huguley Manufacturing Co., each a corporation under the laws of Alabama, John M. Chilton, and Welles, Bennett & Welles, a partnership, and for answer to an order of this court made and entered in the above entitled cause, requiring them to show cause on the 20th day of June, 1901, why the injunction should not be issued in said cause, says:" (Rec. p. 505.)

The answer then proceeds, first, to allege that the bringing of suit in Alabama was not a contempt of court, on the ground that as Alabama corporations the respondents were not bound by the foreclosure decree; second, to deny the jurisdiction of the court to grant an injunction on the ground that the original foreclosure suit was no longer pending in the court; third, to deny the jurisdiction of the court on the ground that an injunction would be in violation of United States Revised Statutes, section 720; fourth, to allege that the court ought to refuse jurisdiction

because the respondents in the Alabama suit had pleaded there; fifth, to deny jurisdiction on the ground that the court had no jurisdiction of the original foreclosure suit for lack of the requisite diversity of citizenship; sixth, to deny the jurisdiction of the court to make the foreclosure sale because the Huguley Company was chartered in Alabama and the Georgia charter of the Alabama and Georgia Company had expired before the sale; seventh, to deny the jurisdiction of the court to make the foreclosure sale on the ground that all the property was in Alabama; eighth, to deny the jurisdiction of the court to order a foreclosure sale of so much of the property as was in Alabama; ninth, to aver that the Alabama and Georgia Company and the Huguley Company, complainants in the Alabama suit, were Alabama corporations and were never parties as such to the foreclosure suit, and that the present plaintiff having pleaded in the Alabama suit could not invoke the protection of the court; tenth, to aver that the Alabama suit was brought in good faith and with intention that on redemption all proper credits should be allowed. The answer closed as follows:

> "Wherefore, these respondents pray that the rule against them be discharged, and that this court issue no other or further order or injunction in this cause, but that it dismiss said bill for want of jurisdiction of the persons and subject matter of said proceedings. And these respondents pray to be discharged with their reasonable costs in this behalf." (Rec. p. 509.)

This answer was sworn to by John M. Chilton and Frank L. Welles in Alabama, and was also sworn to in Georgia by William H. Huguley who also made oath "that he was the last acting president of the Alabama & Georgia Manufacturing Company, and as such makes

this affidavit," and by W. T. Huguley who also made oath "that he is the agent of the Huguley Manufacturing Company in the conduct of these proceedings." (Rec. pp. 509, 510).

On October 8, 1901, an injunction was issued as prayed for. On June 30, 1902, the plaintiff moved to strike the answer from the files as being no answer to the bill but so evasive as to be a delusion. On September 29, 1902, the case came on further to be heard, and was "submitted upon the bill and proceedings in this cause ancillary to the proceedings" in the foreclosure suit, and upon the record in the last named cause, and a final decree was entered (Rec. p. 539). No objection appears to have been made by the respondents to such hearing on the merits.

On March 21, 1903, the Alabama and Georgia Company and the Huguley Company petitioned that an appeal be allowed them to the Circuit Court of Appeals, from the final decree so entered (Rec. pp. 540, 541). This petition was duly signed by the "solicitor and attorney for appellants" and was allowed the same day. An assignment of errors was filed at the same time. The first error assigned was that the Circuit Court erred in not dismissing the bill "for want of jurisdiction of the subject matter and of the parties" (Rec. p. 543). Neither this nor any of the other errors specified appears to be founded on any defect in service of process. The case was heard in the Circuit Court of Appeals on October 15, 1903, and on January 12, 1904, the decree was reversed and the case remanded with directions that the bill be dismissed. (Rec. p. 550.) The opinion of the court (Rec. p. 551) contains no intimation that there was any lack of jurisdiction arising from defective service of process.

At no time in the course of the proceedings did the respondents assert that they had not been duly brought before the court by service of process. The acceptance of

service reserves only a right to object to the jurisdiction, not specifying any right to object to the sufficiency of service. The answer filed contained no statement that the respondents appeared specially and no reservation of rights to object to the sufficiency of service. The respondents at no time moved to dismiss for lack of jurisdiction acquired over them. The case was without objection heard on the merits. An appeal was taken and prosecuted without specifying that the respondents were only before the court for a limited purpose, and the case was decided by the Circuit Court of Appeals without any reference to an objection having been raised to the jurisdiction over the persons of the defendants.

The Circuit Court for the Northern District of Georgia could not have dismissed the bill as prayed in the answer filed by the respondents, on any ground put forward in that answer without deciding a question of fact or of law bearing upon the merits of the suit. That answer alleged as grounds for dismissal lack of jurisdiction of the subject matter in a variety of forms and for a variety of reasons, and alleged various grounds why the relief asked in the bill should not be granted. It nowhere alleged failure to bring the respondents into court. In *St. Louis & San Francisco Ry. Co.* v. *McBride*, 141 U. S. 127, this court said that a demurrer joining want of jurisdiction of the subject matter and failure to state a case, with want of jurisdiction of the person, as grounds for dismissal, waived the right to rely upon defective service; *a fortiori* a pleading alleging only want of jurisdiction of the subject matter and grounds of defence upon the merits waives that right.

Again, it appears that the respondents submitted to a hearing upon the merits without making any objection or by motion to dismiss or otherwise asking the judgment of the court whether they had properly been brought

before the court. This on the principles above considered could not but operate as a conclusive waiver.

Finally, in taking the case to the Circuit Court of Appeals the respondent sought no review of a decision made upon a preliminary objection to the jurisdiction over their persons, but appealing from a final decree assigned lack of jurisdiction of their persons in common with other grounds going to the merits as reasons for reversal. This would have waived their right to object even if it had up to that time been preserved.

THIRTEENTH.

THE COURT COULD NOT PROPERLY DISMISS THE BILL FOR WANT OF SERVICE.

I.

The case was one for substituted service.

The case set forth in the bill of complaint was against parties already before the court in the foreclosure suit. The present bill was ancillary to that suit according to its allegations. The court could and would in such a case make an order for substituted service.

Dunn v. *Clark*, 8 Peters 1.
Webb v. *Barnwall*, 116 U. S. 193.
Pike v. *Gregory*, 94 Fed. Rep. 373.

Had the respondents refused to appear at all or appeared specially and set up simply their objection to the manner of service upon them, the complainant might have asked for an order for substituted service. Failing to follow this course, even if the respondents did not so

waive their right to object to the service as to submit themselves for all purposes to the jurisdiction of the court, yet they could not have asked the court to dismiss the suit without giving an opportunity for an order for substituted sevice.

In *Minnesota Co.* v. *St. Paul Co.*, 2 Wall. 609, 633, this court said that in an ancillary suit "the court will proceed in the injunction suit without actual service of subpœna."

II.

If there was any defect the remedy was not to dismiss the bill, but to set aside the service.

The bill of complaint alleged that the corporations sued were both organized under the laws of Georgia, and were identical with the corporations of the same name sued in the foreclosure suit.

It further alleged that the only place of business either corporation had ever had was in Georgia.

The law of Georgia provides as to service of process on corporations:

> "Service of all subpœnas, writs, attachments and other process necessary to the commencement of any suit against any corporation in any court except as hereinafter provided may be perfected by serving any officer or agent of such corporation, or by leaving the same at the place of transacting the usual and ordinary public business of such corporation if any such place of business there shall be within the jurisdiction of the court in which said suit may be commenced." Georgia Code, Section 1899.

The answer filed shows by the affidavit of W. T. Huguley that he was the agent of the Huguley Company "in the conduct of these proceedings." (Rec. p. 510.)

If then the Huguley Company was, as alleged in the bill, a citizen of Georgia, the service was clearly good.

The provision of the Georgia law as to service of process applies to foreign corporations.

City Fire Insurance Co. v. *Carrugi*, 41 Ga. 660.
Equitable Life Ass'n v. *Gammon*, 119 Ga. 271.

Such a provision is constitutional and applies to service of process in suits in the federal courts if the foreign corporation is doing business in the state.

Conn. Mut. Life Ins. Co. v. *Spratley*, 172 U. S. 602.

The record showed that the only place of business of the Huguley Company was in Georgia. This allegation was nowhere denied. It may well be doubted whether this would not have been a valid service in an original proceeding. In the present suit, however, this question need not have been considered, for as service of process in an ancillary proceeding it was certainly good, and although made without any prior order of court, if objection had been taken the court would have made an order.

Bartlett v. *Sultan of Turkey*, 19 Fed. Rep. 346.

Assuming that this service was in any manner defective, so that on proper proceedings the court would not have sustained its validity, yet there was service of process and the defendants had appeared. The remedy for any defect was not to dismiss the bill, but to order the service set aside.

In *Harkness* v. *Hyde*, 98 U. S. 476, service of process, in an action for a malicious attachment of the plaintiff's property, was made upon the defendant at his residence on an Indian reservation. The defendant appeared

specially and moved to dismiss the action for defect of service. This court held that the service was bad, that the objection had not been waived and ordered the case remanded with directions to reverse the judgment for the plaintiff and to direct the court below to set aside the service made upon the defendant. The court said:

> "The right of the defendant to insist upon the objection to the illegality of the service was not waived by the special appearance of counsel for him to move the dismissal of the action on that ground; or what we consider as intended, that the service be set aside." (Rec. p. 479.)

In like manner in *Goldey* v. *The Morning News*, 156 U. S. 518, the court set aside the service made upon the officer of a foreign corporation while temporarily in New York and did not dismiss the action.

LOUIS D. BRANDEIS,
THOS. H. WATTS,
WILLIAM H. DUNBAR,
of Counsel for Appellants.

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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 194.

RIVERDALE COTTON MILLS

v.

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BRIEF FOR APPELLANT IN REPLY.

LOUIS D. BRANDEIS,
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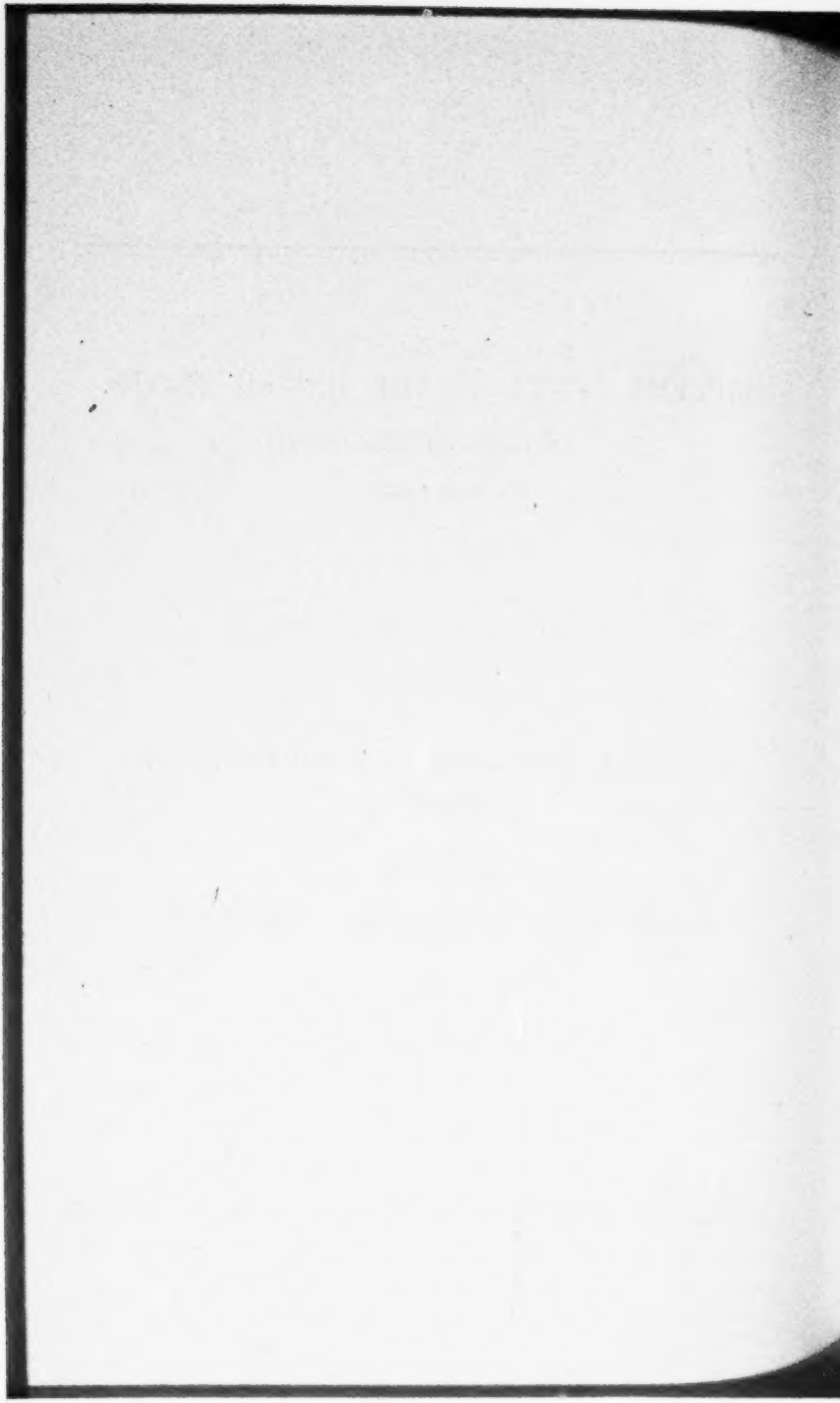

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BRIEF FOR APPELLANT IN REPLY.

The briefs filed in behalf of the appellees have departed so far from the case presented by the record before the court that the appellant asks leave to submit a short reply.

I.

The case must be dealt with according to the pleadings and record.

Both counsel for the appellees unite in declaring that the suit was heard in the Circuit Court upon bill and answer. Assuming that such was the case, then the court has to decide according to the allegations of the bill and answer. In doing so all allegations of fact contained in the bill not denied by the answer are to be taken as true, and all allegations of fact contained in the answer are to be taken as true. Allegations

of conclusions of law in either pleading must of course be disregarded.

The bill incorporates the record in the foreclosure suit, so that this record may be referred to as a part of the bill, and any facts so shown not denied by the answer must be taken to be true whether the proceedings in that suit constitute an adjudication or not.

What the appellees were prepared to prove if the case had gone to a hearing on the merits, and what evidence they had in support of any allegation in their answer, are, if the hearing was on bill and answer, wholly immaterial matters. Equally immaterial are any matters that amount merely to conclusions of law.

On page 8 of Mr. Erwin's brief are enumerated certain facts that "must be taken to be true." Of these the last, numbered 6, is that the decree had no effect upon the land in question: this is a conclusion of law and must be disregarded. The preceding alleged fact, numbered 5, is a fact not alleged in the answer, and, therefore, is not to be taken as true. On the succeeding pages are statements of what counsel say would have been proved at a hearing on the merits. These matters are not contained in the record and should have found no place in the brief. The learned counsel, having protested that the case was before the court on bill and answer, must have been aware that proofs and offers of proof were wholly out of place, and if the case was before the court after a hearing on the merits, proofs and offers of proof not contained in the record should obviously not be stated as part of the case for the court's consideration.

Attention is called at the outset to these departures from the record, unfortunately not the only instances of such departures, because it will appear that the appellees' case is built up largely, if not entirely, on an extrinsic fact of which the record contains neither allegation nor evidence, and because it will appear that throughout the litigation the attempts to defeat the foreclosure of the mortgage, while all made in a single interest, have assumed inconsistent positions as the exigencies of the case appeared to require.

II.

There is only a single corporation known as the Huguley Manufacturing Company concerned in the present litigation.

The original foreclosure bill named the Huguley Manufacturing Company as a defendant, describing it as a corporation organized under the laws of Georgia. (Record, p. 1.) This allegation was admitted, and the defendant corporation set up its ownership of the property. (Record, p. 22.) All the litigation proceeded on this basis through the final decree and attempts to bring the case to this court.

The suit in Alabama was filed with the Huguley Manufacturing Company as one of the plaintiffs, described as a corporation under the laws of Alabama. (Record, p. 486.) That bill alleged that the foreclosure suit was brought against "said Huguley Manufacturing Company" and others as the sole defendants. (Record, p. 488.) No Huguley Manufacturing Company except the plaintiff had up to that point been mentioned in that bill or was ever after mentioned in it. This bill also proceeded on an allegation that the Huguley Manufacturing Company owned the property.

The answer to the present bill alleged that the Huguley Manufacturing Company was organized in Alabama, and on information that it was never organized in Georgia. This allegation, though on information only, is to be taken as true.

Brinckerhoff v. *Brown*, 7 Johns, Ch. 217, 223.
Barker v. *Wyld*, 1 Vernon, 140.

The present bill alleged (par. II, Record p. 474) that it was brought against the "said" Huguley Manufacturing Company, a defendant in the foreclosure bill; and that the "said Huguley Manufacturing Company," defendant in the foreclosure suit, brought the suit in Alabama. (Par. VI, Record, p. 478.) The answer in the present suit did not seek to deny the allegations but alleged that the Huguley Manufacturing

Company was in fact organized in Alabama and not in Georgia, (Par. First, Record, p. 506); that in the foreclosure suit the court had no jurisdiction because "the complainant therein and the Huguley Manufacturing Company were citizens of the same state, to wit: the state of Alabama," (Par. Fifth, Record, p. 507); that the court in the foreclosure suit could not decree a sale because "the Huguley Manufacturing Company was a corporation under the laws of Alabama." (Par. Sixth, Record. p. 507). The allegation that "said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings" (Answer, par. Ninth, Record, p. 508) is apparently an allegation that they were never sued by that description; on any other construction it states a conclusion of law.

Having assumed two inconsistent positions as to a matter peculiarly within its own knowledge, the Huguley Manufacturing Company by its counsel now adopts a third position. It departs from the allegations of the answer, and seeks to have the case disposed of on the basis that there are two Huguley Companies. The plain reply to this position is that no such defence is contained in the answer. The Huguley Manufacturing Company on the record has unequivocally undertaken to defend the suit on the ground that it is a single corporation organized in Alabama, and it cannot now ask the court to deal with the case on any other basis.

III.

The Huguley Manufacturing Company was at the time of the foreclosure owner of the equity of redemption.

Counsel for the appellees have sought to set up title in the Alabama and Georgia Manufacturing Company in order to show that a decree binding upon the Huguley Manufacturing Company alone was not sufficient. They have, however, apparently forgotten the allegations as to title appearing in the record.

No question is before the court as to the sufficiency of proof that the title to the equity of redemption was in the Huguley Manufacturing Company. No such issue has ever been raised. Up to the filing of the briefs in this court by counsel for the appellees it has been common ground throughout the litigation that the Huguley Manufacturing Company was the owner of the equity of redemption. In the foreclosure suit the Huguley Manufacturing Company amended its answer for the sole purpose of alleging that it was the owner of the equity of redemption. (Record, p. 22). Thereafter, the Huguley Manufacturing Company consistently carried on the litigation claiming ownership and appealed from the final decree, on the ground, among others, that as owner it was entitled to rents and profits that had been applied on the mortgage. (Rec. pp. 459, et. seq.)

In the Alabama suit in which the Huguley Manufacturing Company and its co-appellee were plaintiffs the bill alleged :

> "Orators, the Huguley Manufacturing Company, a corporation, avers that it purchased and acquired all the property hereinabove described, subject to said mortgage, and is now the owner of the same, subject to said mortgage." (Record, p. 492.)

The statement of counsel (Mr. Erwin's brief, p. 42) that the Alabama bill alleges title in the Alabama and Georgia Manufacturing Company must have been made in inadvertence.

In the present suit the bill alleges (pars. I and II, Record, pp. 473, 474) title in the Huguley Manufacturing Company, and the answer contains no denial of these allegations.

On the record it is no question of "equities." The allegations of the record are of ownership and title in the Huguley Manufacturing Company. And it is no question of evidence of title, for the allegations made by each party have been the same. The defendants cannot now by statements in the briefs filed in their behalf question facts which are alleged in the plaintiff's pleadings and not denied, or ask the court to consider evidence of such facts and according to its

sufficiency or insufficiency decide the case, when no issue has ever been raised and no attempt ever been made to prove the facts in question.

IV.

The decree in the foreclosure suit was not void.

Counsel for the appellees wholly fail to distinguish between matters which might render the decree in the foreclosure suit void and matters which might render it erroneous. The distinction is vital. However erroneous a decree may be it cannot be attacked collaterally; until reversed or set aside by proceedings brought directly for the purpose a decree remains in full force and effect even though on appeal it would be reversed.

The allegations of the foreclosure bill showed a case of which the Circuit Court had full jurisdiction, both as to subject matter and as to parties. It is not even now pretended that the court had not before it in that suit parties properly amenable to its jurisdiction or that it could not make some decree in that suit, except on the grounds:

(a) that there was not in fact the requisite diversity of citizenship; and
(b) that the land was all outside its jurisdiction and belonged to a party not before the court.

It has already been shown that the lack of diversity of citizenship is not now available to impeach the validity of the proceedings.

The location of the land and the title to it were not matters of jurisdiction. The court might make a personal decree binding upon the parties before it wherever the land was situated and whoever was its owner. The question now before the court is not whether the present appellant acquired under the decree of the Circuit Court a title good against all adverse claimants, but whether it acquired a right to protec

tion against claims by these appellees. It might be true that the Huguley Manufacturing Company had no title at the time of the foreclosure, and yet the appellant by virtue of the decree might be entitled to protection against the assertion of any claim to redeem.

The counsel for the appellees fail to distinguish between the validity of a decree as between the parties and its effect as to others. Granting that a court cannot by decree create a title to land outside its jurisdiction, it can none the less decree that a person over whom it has jurisdiction shall not assert a claim to that land.

In the present case the Huguley Manufacturing Company had in the foreclosure suit admitted and indeed asserted its ownership; the decree of the court that its equity of redemption be cut off was a personal decree; assuming that the court could not direct a sale and a deed from its officer which would pass title to all or even to any of the land, the order for such a sale may have been improvident; it may have been error for which the decree should have been reversed not to include an order on the owner of the equity of redemption to execute a confirmatory deed. These errors, if such they were, might have been corrected, but instead the decree was affirmed by the court of last resort. The existence of errors did not invalidate the decree. So much of it as the court had power to carry into execution it could execute; if the remainder was incapable of execution it resulted only in the plaintiff obtaining a less degree of relief than he was entitled to.

If, therefore, there were two Alabama and Georgia Manufacturing Company corporations, and only one was before the Circuit Court, and the title to the equity of redemption was in the other, yet as to the Huguley Manufacturing Company at least the decree cutting off the equity of redemption which it had asserted, a decree followed by full confirmation of the sale, would have been valid. In point of fact the present record shows a much stronger case, for it shows the equity of redemption actually in the Huguley Manufacturing Company.

So, too, as to the claim that the Alabama and Georgia Manufacturing Company of Alabama was a necessary party to the suit because the bill asked a personal decree against it. If such were the fact it would not invalidate the decree as against the Huguley Manufacturing Company, although the absence of a necessary party might have given a good defence if it had been set up, and although the absence of that party might prevent the plaintiff from getting relief effectual as against it.

The objection is not, however, well founded upon the facts. The foreclosure suit was brought against the owner of the equity, the Huguley Manufacturing Company. To obtain a foreclosure the court was bound to ascertain the amount due on the debt secured by the mortgage, whether the maker of the bonds was a corporation or an individual, alive or dead, a party to the suit or not a party to the suit. The court was equally bound to require payment of the debt so found by a day fixed on pain of foreclosure. In asking for such relief the plaintiff was not seeking and in granting it the court was not giving more than is necessary in every foreclosure by judicial proceedings.

If the court embodied in its decree an order for payment of the deficiency by a person not before the court, as the appellees contend, it was not in response to any prayer of the bill (See Record, p. 3), and while the order could not be enforced against such person, the error did not vitiate the rest of the decree, which the court had both the right to make and the power to execute.

V.

The proceedings in the foreclosure suit were effectual to cut off the equity of redemption of the Huguley Manufacturing Company.

The final decree in the foreclosure suit (Record, p. 356) affirmed by the Circuit Court of Appeals (Record, p. 375) provided :

"8. That the equity of redemption in and to said mortgaged premises be and the same is hereby barred and forever foreclosed, so far as the right of said defendant corporation, or any one claiming under or through it is concerned, since the date of the execution of said trust deed or mortgage, to wit, the 2d day of January, 1884." (Record, p. 360).

The Huguley Manufacturing Company, one of the present appellees, had in the suit in which that decree was entered, affirmatively asserted title to the property derived from the other defendant in that suit, and had asked to be protected in respect to any surplus arising upon a foreclosure sale. (Record, p. 22). It can hardly be seriously denied that the decree was intended to and, if effectual, did cut off the equity of redemption so asserted. The title which the Huguley Manufacturing Company claimed to have may have been good or bad; the only point now material is that the court undertook to foreclose it and that the present bill is to prevent an assertion of title contrary to that decree.

To the full benefit of that decree the appellant shows itself entitled. The bill alleges that the sale was confirmed and reconfirmed and a deed executed pursuant to the decree to the appellant, and that it paid the full purchase money into court as required. (Par. IV, Rec. p. 477.) This allegation is not denied in the answer. It is the final action of the court upon the sale under its decree that forecloses a mortgage and not the question of whether the deed conveys a good title or not. When the sale had finally been confirmed the matter became adjudicated and the decree cutting off the equity of redemption took full effect. This is the effect of *Chicago & V. R. R. Co.* v. *Fosdick*, 106 U. S. 47, cited for the appellees. This court there said:

"But as in cases of strict foreclosure, so in cases of sale, the equity of the mortgagor as against the mortgagee is not exhausted until sale actually confirmed; for if at any time prior he should bring into court, for the mortgagee, the amount of the debt, interest and costs, he will be allowed to redeem." p. 71.

The sentence following quoted by the appellees' counsel does not put the giving of the deed as a matter distinct from confirmation, but refers to an earlier case containing the phrase relied on by the appellees, in support of the statement quoted above.

In determining the effect of the decree it is to be borne in mind that the present proceeding does not depend on the validity of the decree or the sale under it as a link in the chain of title. The present plaintiff is not bound to establish that it has a title good against all the world. It is sufficient to maintain the present suit that the plaintiff shows itself entitled to the benefit of a decree by which the present defendants are cut off, or at the lowest one of them is cut off, from asserting the claim which they seek to assert in the Alabama suit.

VI.

The decree in the foreclosure suit was in fact effective against the Alabama and Georgia Manufacturing Company now before the court even if there were two corporations.

Counsel for the appellees have argued at some length that there was not and could not be any merger of the Alabama corporation with the Georgia corporation for want of legislative authority.

The case presented is not one of merger or of the attempt, never made, of two legislatures to unite in granting a single franchise. The case here is of two franchises granted to the same individuals, one by Alabama and one by Georgia, and the indiscriminate exercise by the individuals of the powers conferred. In support of this the plaintiff in its bill alleged that if there was a double incorporation there was identity of directors, officers and stockholders, the occupation of property operated as one business from an office at West Point, and that the property so employed was all the property of either corporation. (Bill, par. I, Record, p. 473).

The answer filed contains no denial of any one of these facts, nor has either counsel for the appellees ventured to make such a denial, although each has alleged a number of matters, not appearing in the record, as to the organization of the corporation calculated to give the impression though in no way showing that there was not such identity.

In addition to the facts alleged in the bill and now to be taken as true, it appears that the whole litigation arose out of a mortgage executed by the Alabama and Georgia Manufacturing Company not described as a corporation of either state, and that each of the alleged distinct and independent corporations has claimed or admitted, on the appellees' own showing, that it was the mortgagor, in each of which allegations the Huguley Manufacturing Company has joined. The Alabama and Georgia Manufacturing Company, co-defendant with the Huguley Manufacturing Company in the foreclosure suit, admitted the execution by it of a mortgage (Record, p. 14), and later abandoned the suggestion that it was not the same mortgage referred to in the bill; and the Alabama and Georgia Manufacturing Company, co-plaintiff with the Huguley Manufacturing Company in the Alabama suit, alleged in the bill in that suit that it executed this mortgage. (Par. Second, Record, p. 487.) Yet the mortgage appears to be the single act of a single corporation. The whole defence by the Huguley Manufacturing Company has shown, as far as all practical matters are concerned, a single corporation. It is not surprising that Judge Pardee found difficulty in reconciling the position of the present appellees with the previous course of the litigation, throughout which the same individuals have constantly appeared as the persons really interested.

It is indeed painfully apparent that the conception of dual corporations, each independent of the other, was an afterthought. Until the foreclosure suit was finished, except for an obviously hopeless claim to an appeal to this court, no question was raised but that the corporations really interested in the litigation and its result were before the court. The thought of upsetting that result by relying upon there being

two charters came to the appellees' advisers too late to permit of a consistent plan of action. The answer filed in the original foreclosure suit with its details as to payment of interest, change of ownership and the like was the answer of a real defendant and not of two corporations, as the appellees would now have it appear, never possessed of more than a nominal interest in the subject matter, and not capable, according to the theory now presented by the appellees, of having done the acts alleged. The long continued battle of the Huguley Manufacturing Company, defendent in the foreclosure suit, was not carried on by a corporation which, as now alleged in the briefs for the appellees, had no substantial interest, all interest having been, they say, in a corporation of like name chartered in Alabama. Again, the appellees would hardly in their pleadings have alleged so explicitly the title to the property of the Huguley Manufacturing Company before the court in the foreclosure suit and the identity of that corporation with the Huguley Manufacturing Company now before the court if the necessity had been foreseen of distinguishing between two forms of the same body.

If in any case then a corporation consisting of a single body of persons concerned in a single enterprise, but acting under charters from two states, can be bound in both capacities by a judgment or decree against it in one of those capacities, that must be the result in the present case, for there can never be a greater identity or a more indissoluble union than is shown here.

VII.

There was no error in granting an injunction against the further prosecution of any part of the Alabama suit.

Of course if the Alabama and Georgia Manufacturing Company, plaintiff in the Alabama suit, is bound by the proceedings in the foreclosure suit, as we have contended, there can be no doubt of the propriety of the injunction. But if the

Alabama and Georgia Manufacturing Company is not so bound, there was no error.

It appears on the face of the bill in the Alabama suit that the Huguley Manufacturing Company was the owner of the equity of redemption. (Record, p. 492). The only claim made in that bill to an account of rents and profits is by virtue of the alleged ownership of the equity of redemption. It is wholly immaterial in the present stage of the case whether the allegation of ownership by the Huguley Manufacturing Company was in accordance with fact or not. The propriety of the decree of the Circuit Court now under review depends upon the case before it and not upon what counsel for the appellees may state to be the actual facts. The Circuit Court enjoined the further prosecution of a suit based upon a claim for rents and profits which on the allegations of the plaintiffs in that suit was vested only in the Huguley Manufacturing Company. If then this claim of the Huguley Manufacturing Company was barred by the proceedings in the foreclosure suit, the injunction was properly granted, even if the co-plaintiff was not bound by those proceedings. It is perhaps no injustice to conjecture that the Alabama and Georgia Manufacturing Company was joined in that suit because it was believed such joinder might give color to an attempt to relitigate the questions already raised in the foreclosure suit, and the alleged dual existence of the Huguley Manufacturing Company had not then been discovered.

VIII.

The present bill is ancillary to the foreclosure suit.

In principle there is no distinction between the present case and *Julian* v. *Central Trust Co.*, 193 U. S. 93. The court in that case had jurisdiction because the proceedings enjoined were a direct attack upon the decree of the court rendered in the foreclosure suit. The fact commented on by counsel for the appellees, that in that case the Circuit Court in decreeing foreclosure undertook to reserve to itself the

adjudication of claims and liens upon the property, certainly could not determine whether the suit was ancillary or not. A court can not by the form of its decree thus extend its jurisdiction. If the relation of the one suit to the other was such as to make the second ancillary to the first jurisdiction existed; if not, there was no jurisdiction, however much the court might undertake to reserve. In point of fact the matters before the court in *Julian* v. *Central Trust Co.* had nothing to do with the matters the future decision of which the Circuit Court had by its foreclosure decree declared to be reserved. The claim which it was sought to enjoin was one that arose long after the foreclosure was completed and was based solely on the alleged invalidity of the decree confirming title in the purchaser. Jurisdiction was founded on the fact that the intervention of the court was required to protect the purchaser at the sale and secure to it the fruits of the litigation. The same grounds exist here, but with much greater force, because here the attack was made by two corporations, both of which it is submitted were parties to and bound by the decree attacked, and one of which was indisputably the principal and only real defendant in the litigation in which the decree was entered.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
of Counsel for Appellant.

APRIL, 1905.

IN THE

United States Supreme Court.

PETITION FOR CERTIORARI.

RIVERDALE COTTON MILLS,
Petitioners,

vs.

ALABAMA & GEORGIA MFG. CO.,
Respondents.

REPLY OF RESPONDENTS, CALLING ATTENTION TO MIS-STATEMENT IN PETITION OF THE ISSUES.

MARION ERWIN,
Solicitor for Respondents.

JOHN T. MORGAN,
Of Counsel.

APPEAL PRINTING CO., 14 Vesey St. TEL. 102 CORTLANDT.

IN THE

Supreme Court of the United States

RIVERDALE COTTON MILLS, Petitioner, vs. ALABAMA & GEORGIA MFG. CO., Respondents.	Petition for Certiorari.

Reply of Respondent to Petition.

Having been served with a copy of the foregoing petition, and notified that the petition would be presented to the Supreme Court on March 14, 1904, these respondents, The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, both corporations created by and organized under the laws of the State of Alabama, respectfully submit to the Court, by way of response thereto:—

That the statement of the case, in said petition of the Riverdale Cotton Mills, is so absolutely at variance with the truth of the case, and the real issues which were presented by the record for the decision of the Circuit Court of Appeals, that it appears to these respondents, that it would be an imposition on the Supreme Court not to call attention thereto *in limine*.

The Hearing was on Bill and Answer.

The decree of September 29th, 1902, rendered by the Circuit Court of the United States for the Northern District of Georgia,. which was reversed by the Circuit Court of Appeals, and which reversal is the subject of complaint on the present petition for certiorari, was rendered on a hearing on *bill and answer*, with no evidence introduced on the part of the Riverdale Cotton Mills, the complainant in the so-called ancillary bill to sustain its allegations, or to overcome the denials of fact made in the answers of the Alabama corporations, which, if true, not only took all the equities out of the so-called ancillary bill, but left the Georgia Court without any jurisdiction to enjoin the suit brought by the Alabama corporations in the State Court of Alabama.

"The rule is, that if no replication be filed the answer will be taken as true, and no evidence can be given by the complainant to contradict anything which is therein well alleged."

> Brown vs. Pierce, 7 Wall, 212.
> Reynolds vs. Crawfordville Bank, 112 U. S., 409.

Even where there are allegations in the bill material to the complainant's right to the relief sought, the rule is:

"If the answer neither admits nor denies the allegations of the bill, they must be proved upon the final hearing."

> Young vs. Grundy, 6 Cranch., 51.
> Brown vs. Pierce, 7 Wall, 211.
> Commonwealth, &c., vs. Cummings, 83 F. R , 767.

The case as stated in the petition for certiorari is the case as made by the allegations of the so-

called ancillary bill of the Riverdale Cotton Mills, and totally ignores that all the material allegations of the same were not only wholly overcome by the denials thereof in the answers of the respondents, but that the complainant introduced no evidence whatever to support the allegations of the bill. This would have precluded the complainant's right to the relief even if replication had been filed, instead of the hearing having been on bill and answer.

Statement of the case as made on the record before the Court of Appeals.

There are four corporations, on the identity and mutual relations of which the case turned:

(*a*) "The Alabama & Georgia Manufacturing Company" under which name certain individuals were incorporated by the act of the Legislature of Alabama of February 7, 1866, with principal office in Chambers County, Alabama, and authorized to erect and conduct certain cotton mills on the Alabama side of the Chattahouchee River (Record C. C. A., Part IV, pp. 32, 33 and 42).

(*b*) "The Alabama & Georgia Manufacturing Company," under which name certain individuals were incorporated by act of the Legislature of Georgia of March 21, 1866, with principal offices at Columbus and La Grange, Georgia, and authorized to erect and conduct certain cotton mills on the Georgia side of the Chattahoochee River (Record C. C. A., pp. 653–660).

(*c*) "The Huguley Manufacturing Company" under which name certain individuals were incorporated February 27, 1890, under general laws of the State of Alabama with principal office in

Chambers County, Alabama, a copy of which charter is in the pleadings (Record C. C. A., pp. 656–660).

(*d*) "The Huguley Manufacturing Company" under which name certain individuals were incorporated under general laws of the State of Georgia, with principal office at West Point, Georgia.

A copy of the last mentioned charter is not in the record. But the fact of the incorporation of a company in that name in Georgia, is charged in the original bill filed by J. J. Robinson, Trustee against it in the Circut Court of the United States for the Northern District of Georgia, and is admitted in the answer of said company to said bill. The fact is also admitted in the petition for Certiorari (Clause *First*, p. 2).

Oh January 21st, 1891, J. J. Robinson, a citizen and resident of the State of Alabama, as trustee for mortgage bondholders, brought suit in the Circuit Court of the United States for the Northern District of Georgia, against the Alabama and Georgia Manufacturing Company (the Georgia corporation), and against the Huguley Manufacturing Company (the Georgia corporation), to foreclose a mortgage alleged to have been given by the Alabama & Georgia Manufacturing Company (the Georgia corporation), on certain cotton mills situate in Chambers County, Alabama, and on certain Islands in the Chattahoochee. The said Huguley Manufacturing Company (the Georgia corporation) was made party defendant as assignee of the equity of redemption.

The said Georgia corporations answered admitting their incorporation and citizenship in Georgia, and defended the suit.

It is affirmatively shown in the record that J. J. Robinson, the trustee and complainant in said bill, knew at the time he filed the bill, of the existence of the "Huguley Manufacturing Company," the

Alabama corporation. His certificate to that charter under date of February 28, 1890, is in the record (Part IV, pp. 57-61). He was on constructive notice also of the charter of the "Alabama & Georgia Manufacturing Company," the Alabama corporation of that name, by Act of the Legislature of Alabama of Feb. 7, 1866. Robinson could not bring the foreclosure suit against the Alabama corporations in the Federal Court of Alabama, because they had the same citizenship as he had. He could not make them parties defendant to the bill he filed in the Federal Court in Georgia, for the same reason. He elected to bring suit in the Federal Court in Georgia, against the Georgia corporation solely, to foreclose on cotton mills situate in Chambers County, Alabama. The Alabama corporations were not made, nor were they parties to the Robinson bill in the Federal Court in Georgia.

The Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company (the Georgia corporations) defendants to the Georgia bill, contested the case and finally lost it. The said Federal Court for the Northern District of Georgia (Part III, p. 13), on March 10th, 1896, decreed that the said property including the Mills situate in Alabama, should after being advertised in Georgia alone be exposed for sale at Hamilton, Harris County, Georgia, on May 6th, 1896, by master commissioners.

The charter of the Alabama & Georgia Manufacturing Company (the Georgia corporation), which was granted by act of General Assembly of Georgia, of March 21, 1896, expired by statutory limitation in 30 years from its date, to wit.: on March 21, 1896, and the corporation then died (Act of January 1, 1863; Code of 1895, Sec. 1851. Logan vs. R. R., 87 Georgia Rep., 533; West

End R. R. vs. Atlanta, &c., R. R., 49 Georgia, 151; Central R. R. vs. State, 54 Ga., 404). Notwithstanding this, without making new parties, the sale was made on May 6, 1896, as provided in the decree of March 10, 1896, and a decree of confirmation was made June 25, 1896 (Part III, p. 24). The decree of the Circuit Court of the Northern District of Georgia, directed the Master Commissioners whenever the purchaser should comply with the terms of sale, to convey to the purchaser the property sold including the Mills in Alabama, but did not direct any conveyance by the trustee, nor by the mortgagor, nor by anyone else. The Riverdale Cotton Mills went into possession of the Alabama property under color of this decree and sale made in Georgia, and claims that it complied with the terms of purchase, and obtained a deed from the Master Commissioners of the Federal Court in Georgia to said property, though neither of said claims so set up in its ancillary bill is established by any evidence.

On May 2, 1901, The Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company (the Alabama Corporations) filed their bill in the First District of the Northeastern Chancery Division of the State of Alabama, against the Riverdale Cotton Mills and others, for redemption of the property in Alabama, alleging that the title and equitable right to the property are in them and had been long prior to the Georgia suit. That they were not parties nor privies to the Georgia suit and were not bound by it. They attached as exhibits to their bill copies of their charters under the laws of Alabama, and averred that these were the sole charters of said Alabama Corporations (that they had not been domesticated in Georgia by the laws of that state) They admitted that under similar names to theirs cer-

tain individuals had been incorporated under Georgia laws, but denied that the Georgia corporations were in fact or in law identical with them.

They set up the fact of the organization of their companies under their charters in Alabama, and that they had erected their mill plants in Alabama, and had done business there until their possession was ousted by the illegal proceedings in the Georgia Court.

They set up the fact that the entire property in controversy was situate in Alabama, except perhaps one Island in the Chattahoochee River, used only for agricultural purposes.

The Riverdale Cotton Mills and other defendants appeared and answered the suit in the State Court of Alabama, but while the case was pending for hearing, abandoned that forum.

On June 10, 1891, The Riverdale Cotton Mills, claiming as purchaser under the Georgia, master commissioners' sale in the Robinson suit, filed in the Circuit Court of the United States for the Northern District of Georgia, its so-called ancillary bill, against the plaintiffs in the Alabama suit, and their attorneys to perpetually enjoin them from prosecuting the same, and by temporary injunction tied up the said proceedings.

The said ancillary bill, attacked all the allegations of the Alabama bill, charged that the plaintiffs there were never organized under the laws of Alabama, and that they were in fact and in law the same corporations, as the Georgia corporations who were parties to the Robinson bill, and were bound by the decrees in that case.

The Alabama corporations filed their answer to the so-called ancillary bill, denying that they were in law or in fact the same corporations as the corporations of similar name in Georgia, and denying that they were parties to the Georgia suit or bound by the decrees therein.

They denied that the bill was in fact ancillary to the Robinson suit or that the court could maintain jurisdiction over them by reason thereof. They denied jurisdiction of the court in Georgia to foreclose a mortgage on property in Alabama, or to render a sale, made under decree in Georgia, effective by a master-commissioners deed. They denied the jurisdiction of the Georgia Court over them as Alabama corporations being subject to suit in their home district only, and they denied the power of the Georgia Court to enjoin the suit in the State Court of Alabama.

The case was heard on bill and answer with no evidence offered by either side, the court however recited in its decree that its decree was based on the proceedings in the Robinson suit and the proceedings in the suit on the so-called ancillary bill. By the decree rendered September 29, 1902, the Alabama corporations were perpetually enjoined from proceeding with their suit for redemption in the State Court of Alabama, or otherwise. From this decree the Alabama corporations appealed to the Circuit Court of Appeals for the Fifth Circuit.

Decree of Circuit Court of Appeals.

The Circuit Court of Appeals did not find it necessary to pass upon but one single point out of many in reversing the Court below, and that was upon the absolute want of fundamental jurisdiction of the Circuit Court of the United States at the suit of a citizen of Alabama, plaintiff, to decree against the property rights of corporations of Alabama not made parties to the suit, and which if made parties defendant would have ousted the jurisdiction of the Court.

In reaching this conclusion the court pointed out that although the same individuals may have been incorporated under the same name in two

different states, the charters were taken out independently without reference to each other. That there was no power of merger given in either, and that the corporations of each state were separate entities.

In so deciding the Circuit Court of Appeals set no new precedent but followed a well established line of decisions of this court.

This is the principle laid down in Ohio & Miss. R. R. Co. *v.* Wheeler, 1 Black, 286, and has been repeatedly affirmed. In that case the court said:

"It is true, that a corporation by the name and style of the plaintiffs appears to have been chartered by the States of Indiana and Ohio, clothed with the same capacities and powers and intended to accomplish the same objects, and it is spoken of in the laws of the States as one corporate body, exercising the same powers and fulfilling the same duties in both states. Yet it has no legal existence in either State, except by the law of the State. And neither State could confer on it a corporate existence in the other, nor add to or diminish the powers to be there exercised. It may indeed be composed of, and represent, under the corporate name, the same natural persons. But the legal entity or person, which exist by force of law, can have no existence beyond the limits of the State or sovereignity which brings it into life and endues it with its faculties and powers. The president and directors of the Ohio & Mississippi Railroad Company is, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio, and they cannot be joined in a suit as one and the same plaintiff, nor maintain a suit as one and the same plaintiff, nor maintain a suit in that character

against a citizen of Ohio or Indiana in a Circuit Court of the United States."

Ohio & Miss. R. R. Co. *v.* Wheeler, 1 Black, 286-298.

Quoted and approved in

St. Joseph & Grand Island R. R. *v.* Steele, 167 U. S., 163.

"The rights and liabilities of a State corporation, which has been incorporated in several states, as a corporation of states other than that which created it, cannot be adjudicated in a suit in a Federal Court in which jurisdiction depends upon its citizenship in that state, and would be ousted by citizenship in the other states."

Louisville, etc , R. R. Co. *v.* Louisville Trust Co., 174 U. S., 552.

Moreover, if the Circuit Court of the United States for the Northern District of Georgia could have no jurisdiction on the original bill, at the suit of a citizen of Alabama against the Alabama corporation joined with the Georgia corporation, it surely could not acquire jurisdiction, merely by obtaining a decree against the Georgia corporations first, and setting up this decree in the same court as binding on the Alabama corporation, and enforcing it as an ancillary jurisdiction.

The Dissenting Opinion.

It is true that one of the judges of the Circuit Court of Appeals dissented from the majority in the case at bar.

He criticized the fact that the rights of the Alabama corporations were not asserted in the Georgia suit. If any one is to be censured for this, it should be Robinson, the trustee plaintiff in

that suit, who, with full knowledge of the fact, elected that forum and undertook to get along without them. They could not have been made parties defendant without ousting the jurisdiction of the court. It was an extraordinary proceeding for him to go into another state to foreclose a mortgage on property in his home county. The Alabama corporations were not called upon to break into the suit in Georgia as intervenors. The Georgia corporations defended their own interests as they understood them.

But even the dissenting judge indicated in his opinion that the decree of the court below would have to be reversed on other grounds. While these grounds are not stated, one of them made in the assignment of errors is so patent that it ought to be sufficient in itself to cause a denial of the certiorari.

The right of the Riverdale Cotton Mills rests only upon its claim as a purchaser, under an alleged deed from master commissioners, under a foreclosure in the Circuit Court for the Northern District of Georgia, of land situate in Alabama. There was no decree *in personam* directing the trustee or the mortgagor to convey title to the purchaser and no such conveyance is claimed. Such decree and conveyance was absolutely void.

Watkins vs. Holman, 16 Pet., 26.
Boyce vs. Grundy, 9 Pet., 275.
Northern R. Co. vs. R. R. Co., 15 How., 233.
Watts vs. Waddle, 6 Pet., 389.
Guarantee Co. v. Delta, &c., Co., 104 F. R., 5.
Carpenter vs. Strange, 141 U. S., 87-106.

"It is the deed made to the purchaser, actually transferring the title of the parties to the suit,

that terminates the mortgagor's equity of redemption."

Chicago, etc., R. R. v. Fosdick, 106 U. S., 71.

The respondents respectfully submit that there is no novel or important question involved in the case which has not already been fully settled by the decisions of the Supreme Court, and that said petition should be denied.

MARION ERWIN,
Solicitor for Respondents.

JOHN T. MORGAN,
Of Counsel.

[3067]

Since printing the above reply to the petition for Certiorari, I have on this 11th day of March, 1904, been served with a copy of another petition for Certiorari, with notice from Counsel for the Riverdale Cotton Mills, that the new petition would be substituted for the old one. This reply is equally applicable to the new petition. We do not consent to the withdrawal of the previous petition from the record, but call attention of the Court to the admission in the previous petition (Clause 6th) That there was no evidence introduced to sustain the allegations of the so-called ancillary bill, of new matters not covered by the Robinson suit.

MARION ERWIN,
Solicitor for Respondents.

Supreme Court of the United States.

OCTOBER TERM, 1904.

NO. 194.

THE RIVERDALE COTTON MILLS OF GEORGIA,

Petitioner,

vs.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA,

AND

THE HUGULEY MANUFACTURING COMPANY OF ALABAMA,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals, for the Fifth Circuit, New Orleans, La.

BRIEF OF

JOHN T. MORGAN,
Solicitor for Respondents.

JOHN M. CHILTON,
WILLIAM S. THORINGTON,
ROBERT PORTER SHICK,
Of Counsel.

STATEMENT OF THE CASE.

I.

THE ROBINSON BILL FOR FORECLOSURE IN FEDERAL COURT OF GEORGIA.

On January 21st, 1891, J. J. Robinson, a citizen of Alabama, as one of the trustees for mortgage bondholders, filed his bill against the mortgagor, The Alabama and Georgia Manufacturing Company, averred in the bill to be a corporation created under the laws of the State of *Georgia*, and against The Huguley Manufacturing Company, averred in the bill to be a corporation created under the laws of the State of *Georgia*, and, also, to be the purchaser of the equity of redemption to the mortgaged property, and against W. T. Huguley, the other trustee, averred to be a citizen of Georgia, and to have an interest in the property in conflict with the trust. (Rec. p. 1.)

The mortgage was attached as an exhibit to the bill, describing all of the property — lands, cotton mill plant, and village—as located wholly *in Alabama*, except certain detached and valueless islands (also situate in Alabama), which were erroneously described as being in Georgia. (Rec. pp. 5-6, 490-1, 498-9, 507.)

The bill sought an account of the mortgage debt, foreclosure and sale, a receiver, an injunction, general relief, and subpœna; the second clause of the prayer being, that orator might have a decree in his favor against the said The Alabama and Georgia Manufacturing Company (the *Georgia* corporation); that *it* should pay the sums found to be due, and that in default the said The Alabama and Georgia Manufacturing Company, and any and all persons claiming under *it* (the *Georgia* company) should be foreclosed of and from all equity of redemption, etc. (Rec. pp. 3-4; Op. C. C. A. 555, 127 Fed. 500-1.)

But no receiver was ever appointed and no injunction was ever granted, (Rec. pp. 8-9.) There was no service of subpœna upon the bill, (Rec. p. 488), but service was acknowledged by W. T. Huguley (personally), and by the *Solicitors* for the Georgia corporation sued, (Rec. p. 8,) and said solicitors appeared and demurred to the bill, and their demurrers being overruled by the court, they filed their answers (Rec. pp. 9-

22); and to their answers complainant filed the general replication. (Rec. pp. 23, Op. C. C. A. 555-6, 127 Fed. 501.)

The cause proceeded to trial and there was a decree *in rem* against The Alabama and Georgia Manufacturing Company of *Georgia*, "*one* of the defendants herein," of foreclosure and sale for payment of the entire debt. (Rec. pp. 130-3.)

Pursuant thereto, on Sept. 6, 1892, the property was sold in Atlanta, Georgia, to Lanier, Dallis and Kirby, committee for the bondholders, and a deed made by the *commissioner, only.* (Rec. pp. 151, 313-4.) Thereupon, the purchasers obtained a charter under the general laws of Alabama for "The Galeton Cotton Mills," (Rec. pp. 495-7,) all of the stock being in turn concurrently assigned and transferred to the "West Point Manufacturing Company," another and neighboring Alabama corporation, (Rec. pp. 188, 219-221, 303-310, 320, 324-5,) which company thenceforth operated the plant and took the rents and profits. (Rec. pp. 489-490.)

On appeal by respondents to the Circuit Court of Appeals, at New Orleans, the decree was reversed and set aside, all subsequent proceedings being declared "vitiated," and the cause remanded. (Rec. p. 364, 6 C. C. A. 79, 56 Fed. 690.)

In conformity therewith, the lower court entered its decretal order granting petitioners restitution of the property and an accounting upon certain conditions precedent, (Rec. pp. 324-5, 329-330,) with which petitioners declined to comply.

Thereupon the Circuit Court entered, on March 30, 1895, its modified decree—which was likewise *in rem*—against the said sole defendant in foreclosure, the *Georgia* corporation of The Alabama and Georgia Manufacturing Company, authorizing also execution for any *balance* or *deficiency over.* (Rec. pp. 356-362.)

Respondents appealed therefrom (Rec. pp. 362-7,) to the Circuit Court of Appeals and that court, while affirming the decree below, yet directed the reference for accounting to proceed, (19 C. C. A. 152, 72 Fed. 712,) and the lower court duly entered its decretal order accordingly. (Rec. pp. 385-6.)

We will not tax the court by following the proceedings on the reference, other than to refer, in passing, (for the purposes made clear under our argument further on,) to the gross fraud perpetrated thereunder and imposition upon the court by the accounting parties in the tender of certain books of account, (ledger and journal,)—which, though vouched for by L. Lanier and one Wellington, the chief officials, as honest books of *original* entry, on which they rested their whole defense, nevertheless were afterwards proven (by the expose of the "water-marks") to

be palpable FORGERIES. (Rec. pp. 407, 457-9.) Suffice it, pending said reference, under order of March 10, 1896, (Rec. p. 383,) the property was offered for sale on May 6, 1896, this time at Hamilton, Harris County, Georgia, and again knocked down to said L. Lanier "for and on behalf of the holders of the bonds," and so reported (Rec. pp. 390, 391,) and on June 25, 1896, the sale was *conditionally* confirmed, the *commissioner* being "authorized and directed to convey to said purchasers named—(the *bondholders*)—all and singular the property and the property rights of every description described (in) said decree, *upon the purchaser complying with the terms of said sale.*" The decree goes on to vest in Movants a preferred lien for whatever sum of rents and profits might thereafter be awarded under the reference then pending. (Rec. pp. 395-6.)

As late as Sept. 22, 1898, it developing that there had been *no* compliance, through said Lanier's confessed inability to control the bonds committed to the bid (Rec. pp. 440-4, 446,) the Circuit Court, on October 15, 1898, so modified its original decree as to lift and dissolve the lien previously vested in Movants for the rents, transferring same to the proceeds of sale, and so changing the terms and parties as to authorize its *commissioner* to accept a stated sum in *cash* in lieu of *bonds, supra,* for the purchase money; the particular terms of the said decree providing as follows:

" And it is ordered and decreed that the purchaser do pay
" into court within forty days from this date, the whole of
" the balance of the purchase money of said property * * *
" and that, *upon certificate of the Clerk* of the fact of such
" payment, thereupon the *Commissioner*, S. C. Dunlap, Esq.,
" *do execute and deliver* to said purchaser (Lanier) or such
" person as he may designate, a deed to the property sold,"
" etc. (*Without more.*) (Rec. pp.446-7.)

But, so far as the record discloses, there is *no evidence*, whether in the form of the said stipulated "*certificate* of the Clerk," or by *deed*, or otherwise, showing or tending to show that there ever was "within forty days from this date" or thereafter, "the fact of such payment," in compliance with the terms of said interlocutory decree of Oct. 15, 1898, or that Petitioner has any deed—even from the said Commissioner, only, as claimed. (See Record, p. 447, *et seq.*, which is wholly silent upon the subject.)

In that state of the record, there was an appeal from the said decree of Oct. 15, 1898, and the other interlocutory de-

crees preceding, to the Circuit Court of Appeals, resulting in an affirmance.

94 Fed. 269.

Respondents undertook to review the last decree of affirmance on application to this court for writ of *certiorari*—but the effort failed.

175 U. S. 726.

Thereupon, the two Georgia corporations and W. T. Huguley sued out an appeal to the Supreme Court of the United States, but this court declined to take jurisdiction of the appeal.

184 U. S. 290.

II.

THE BILL FOR REDEMPTION IN STATE CHANCERY COURT OF ALABAMA.

On May 2nd, 1901, while the last mentioned appeal was pending in the Supreme Court, and undisposed of, The Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company filed their bill in the Chancery Court of the First District of the Northeastern Chancery Division of the State of Alabama, describing themselves as corporations duly created and organized under the laws of the State of *Alabama*, attaching charters, (Rec. pp. 494-5, 531-5, Op. C. C. A. 551-2, 127 Fed. 501,) and averring that the former, The Alabama and Georgia Manufacturing Company of *Alabama, was seized and possessed with the title* to all the lands and property, (Rec. pp. 486-7, 505, Op. C. C. A. 556, 127 Fed. 501), and that said lands and property were situate wholly in *Alabama*, (Rec. pp. 488, 490-1, 498-9, 507); setting out the proceedings under the Robinson bill in the Federal Court in Georgia, against the *Georgia* companies, but denying the effect of such proceedings upon the rights of the two *Alabama* corporations complainant, they not having been parties thereto, and seeking to have their right of redemption in the mortgaged property established and enforced, and an accounting for the rents and profits of $528,000, as charged. (Rec. pp. 486-500.)

To this bill, the West Point Manufacturing Company, the Galeton Cotton Mills, and the petitioner, The Riverdale Cot-

ton Mills, averred to be each a corporation under the laws of *Alabama*, and J. J. Robinson, trustee, a citizen of Alabama, and W. T. Huguley, trustee, a citizen of New York, were all made defendants, (Rec. pp. 486, 489, 492-4); and the three first named defendant corporations, on June 2nd, 1901, appeared in the Alabama State Court and filed joint and separate answers, demurrers, pleas and motions. (Rec. pp. 510-525, Op. C. C. A. p. 556, 127 Fed. 502.)

III.

THE INJUNCTION BILL IN THE FEDERAL COURT OF GEORGIA.

After so appearing in the Alabama State Court and pleading to the bill of the two Alabama companies, as above stated, the petitioner, The Riverdale Cotton Mills, now claiming to be a corporation under the laws of Georgia, (Rec. p. 473,) but offering no charter or other evidence, filed its bill in the Federal Court in Georgia, in which the Robinson suit had been formerly pending, against the two Alabama companies, complainants in the bill in the Alabama State Court, and their solicitors. Petitioner designated its said bill as a dependent or ancillary bill to the proceedings under the original Robinson bill, and asked for a writ of injunction against the two Alabama corporations and their solicitors to restrain the further prosecution of their suit in the Alabama courts. (Rec. pp. 473-482, Op. C. C. A. 556-7, 127 Fed. 502.)

On the same day the judge of the Circuit Court passed an order that the defendants named show cause on the 20th of June, 1901, why an injunction should not issue as prayed for.

No service was made on The Alabama and Georgia Manufacturing Company of Alabama or on The Huguley Manufacturing Company of Alabama, but counsel of record for those companies, in the Alabama suit, who were individually made parties defendant, acknowledged service for themselves individually, and the marshal returned that he had served subpœnas on W. H. Huguley and W. T. Huguley at West Point, Ga. (Rec. pp. 501, C. C. A. 557, 127 Fed. 502.)

To this bill, on June 21, 1901, the two defendant Alabama corporations filed their answers, with exhibits. (Rec. pp. 505-535.)

On Oct. 8, 1901, the Federal Court in Georgia granted the prayer of the bill for a preliminary injunction, *pendente lite*. (Rec. pp. 535-540.)

The complainant filed no replication to the answer of defendants nor were exceptions filed to the sufficiency of defendants' answer. A motion was made by petitioner to strike the answer, but no action of the court was had thereon. The defendants stood on their objections to the jurisdiction of the court, supported by exhibits to their answer, and by the face of the record. (Rec. pp. 505-535, Op. C. C. A. p. 557, 127 Fed. 502.)

A petition of the defendants for a writ of prohibition was denied in the Supreme Court of the United States, as premature, February 24th, 1902.

In re Huguley Manufacturing Company, 184 U. S. 297.

On Sept. 29, 1902, the Circuit Court rendered a final decree, perpetually enjoining the defendants and all persons claiming under them, from further prosecution of the Alabama suit. (Rec. pp. 539-540.)

From this final decree the two Alabama companies sued out an appeal to the Circuit Court of Appeals (Rec. pp. 540-550,) where the decree was, on Jan. 12, 1904, reversed, with directions to dismiss the bill. (Rec. pp. 551-560, 127 Fed. 497-505.)

Thereupon, the appellee, the Riverdale Cotton Mills, filed its application for a rehearing, but the prayer was denied. (Rec. pp. 565-573.)

To review said last named decree of the Circuit Court of Appeals, the petitioner, The Riverdale Cotton Mills, filed in this court a petition for the writ of *certiorari*, by which the proceedings in the Circuit Court of Appeals are now before this court. (Rec. pp. 573-574.)

We have not undertaken to set out in detail the complete contents of the various pleadings above referred to, nor the proceedings thereon, for the reason that they may be found in the brief filed in this court by our associate counsel, Marion Erwin, Esq., on behalf of respondents, and because the facts and pleadings of record have, in part, been so accurately and fairly presented under the review found in the able opinion of the majority of the Circuit Court of Appeals, at pages 551-7 of the said record, to all of which the attention of this Honorable Court is particularly invited.

127 Fed. 497-503.

We believe, however, that it will be of aid to the court, if not indispensable to a full and clear understanding of the case, for us to submit a preliminary statement of the facts embraced in, or suggested by, the record, and which shed light both upon the rights and motives of the respondents, the latter having been impugned, to some extent, by petitioner's counsel, and in the dissenting opinion of one of the judges of the Circuit Court of Appeals.

IV.

HISTORY OF CASE ANTEDATING BILL FILED IN FEDERAL COURT IN GEORGIA.

"THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA."

Incorporation—No power of Consolidation—Feb. 7, 1866.

On Feb. 7, 1866, by act No. 183, the General Assembly of the State of Alabama, upon the petition of James Metcalfe, George Huguley, Benjamin H. Hill, William P. Chilton and George W. Huguley, as original incorporators, granted a charter creating the corporation duly entitled:

"The Alabama and Georgia Manufacturing Company,"

with principal office "in the County of Chambers, and in the State of *Alabama*," and authorized to acquire lands and operate thereon certain cotton mills situate on the *Western*, or *Alabama*, side of the Chattahoochee river.

Neither the original incorporators nor their successors ever petitioned for privilege to *merge* or *consolidate* with any other company, whether of the same name or of any other name, or to establish or maintain any branch office or 'agency,' or to transact corporate business, outside of Alabama; and no such power or privilege to do either of these acts was ever granted by the Legislature of the State of Alabama.

The complete text of the charter so granted to the said The Alabama and Georgia Manufacturing Company—hereinafter called, for sake of brevity, "Alabama Company,"—is set out in the transcript of record, as certified up from the Circuit Court of Appeals for the Fifth Circuit, (Rec. pp. 486, 494-5,) and is also reproduced in full in the opinion of that court. (Rec. pp. 551-2, 127 Fed. 497-8.)

Organization of the Alabama Company—Capital Stock Subscribed and Paid In—Plant Established, Equipped and Paid For—1866.

The said incorporators and their associates, after securing said charter on Feb. 7, 1866, lost no time in perfecting their organization as "The Alabama and Georgia Manufacturing Company," in strict conformity with all the forms and ceremonies prescribed by the Alabama statutes. That is to say, between said date and March 20, 1866, corporate meetings were regularly called and held in Alabama; by-laws were submitted and adopted by its stockholders; directors and officers were elected; books of subscription to the capital stock were opened and the full amount of said capital stock ($156,000) was there and then, to-wit, *on and before March 20, 1866,* duly subscribed, and the larger proportion paid in, and from the proceeds thereof the lands in controversy were all acquired, the manufacturing plant, mills, warehouses, operative and other houses, were constructed, the machinery installed, and the property made a going concern during the year 1866, —all paid for with the money so subscribed and paid into the treasury of the said *Alabama* Company, pursuant to said subscriptions by its shareholders to its capital stock. (Rec. pp. 486-7, 494-5, 505, 177.) The fact of said subscriptions to said capital stock, and of the payments thereunder, and itemized expenses incident to such disbursements on lands and construction account, dating from the inception of this enterprise on Feb. 7, 1866, as well as the minutes of the proceedings from time to time, were all made matters of official record upon the books of said *Alabama* company, and with the original title deeds, are now in the custody of W. H. Huguley & Company, Secretary-Treasurer, and Manager.

Title to Lands and Property Vested in the Alabama Company 1866.

Pursuant to the granting of said charter on Feb. 7, 1866, and promptly thereafter, to-wit, *on and before the 20th day of March, 1866,* as the initial step preliminary to the formal inauguration of said manufacturing enterprise, all the lands in controversy, and "also riparian rights or water privileges in any wise belonging to the same at any and all points, * * * * together with all and singular the tenements, hereditaments and appurtenances thereunto in any wise appertaining," were duly acquired by said *Alabama* Company from one James Campbell, owner thereof and a resident of Cham-

bers County, Alabama. A warranty deed, duly and regularly acknowledged before one James M. Hill, a justice of the peace in Alabama, and delivered to said corporation grantee, and filed in office and recorded in the Record of Deeds, Vol. 15, pp. 34-5, of the Probate Court of Chambers County, Alabama, vested the legal title in and to all the said lands and property in the said original *Alabama* Company, its stockholders, "their heirs and legal representatives forever,"—the said corporation grantee being more particularly identified and its habitat or citizenship located by the specific terms of the said instrument itself, as "The Alabama and Georgia Manufacturing Company *of the State of Alabama, Chambers County.*"

As a matter of fact and of law, said Alabama Company was duly organized, its lands acquired, and its title was so vested in 1866, as explained, before the charter to the Georgia Company, likewise entitled "The Alabama and Georgia Manufacturing Company," was ever granted. And that title has since then never passed out of that Alabama Company by any valid judicial order or decree or conveyance thereunder, whether under State or Federal procedure, or through any legislative act. (Rec. pp. 177, 486-7, 505, Op. C. C. A. 556, 127 Fed. 501.)

"THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF GEORGIA."

Not the "Alabama" Company "Domesticated" in Georgia, but a Distinctly Independent and Separate Corporate Entity of Georgia.—March 21, 1866.

In order to carry out the general plans and purposes of the incorporators and organizers of the said *Alabama* Company, thus already organized and established, it was deemed necessary and important that these same original incorporators and organizers of the said Alabama corporation and their successors should control the water rights of the Chattahoochee river not only through the riparian rights already granted them on the *Western* or *Alabama* side of the river by the State of Alabama, but through those of the State of Georgia on the *Eastern* side of the river as well, *i. e.* at the point on the eastern bank opposite where their manufacturing plant in Alabama had already been located. These incorporators had in view the then purpose of utilizing, if not immediately, at least at some future time, the recognized fine water power of the intervening Chattahoochee river, by the

proposed acquisition of other lands on the eastern or Georgia side of the river, and the erection thereon of another *independent* manufacturing plant, and in such event, of using Columbus, or LaGrange, Georgia, for *its* offices and shipping points. To that end, the said incorporators did not elect to ask the Legislature of Georgia for any express statutory license authorizing the *pre-existing Alabama* company to exercise in Georgia the same powers and rights which had been given it by the parent State of its creation (*Alabama*), *i. e.*, that it be *"domesticated"* in Georgia by the laws of that State, but the application was for the creation of a *separate* and *independent* corporation under the same name; and, on March 21, 1866, "The Alabama and Georgia Manufacturing Company," as a second, distinctly independent corporation, was granted a charter by the Legislature of the State of Georgia, hereinafter, for brevity, called the "*Georgia* Company." (Op. C. C. A., Rec. p. 558.)

The complete text of said Georgia charter appears in the record certified up from the Circuit Court of Appeals, at pp. 529-531, and is also incorporated in full in the opinion of that court. (Rec. pp. 552-4; 127 Fed. 498-9.)

The Georgia Charter—Important Provisos Restricting Ownership and Operation of Property Acquired by the Georgia Company (if any) to the Territorial Jurisdiction "on the East (Georgia) Side of the River."—Other Significant Limitations Imposed, and Powers Denied to It.—All Distinguishing the "Georgia" Company from the Pre-existing "Alabama Company.—March 21, 1866.

Among other terms and conditions, expressed and implied, in the said charter as granted by the Legislature of Georgia, we here note only the more material and significant ones:

Powers and Privileges Granted.

1.—To acquire lands and erect all needful buildings *"on the East Side of the River"* (Chattahoochee.)—Sec. VI of Charter, Rec. p. 530);

2.—To control and use the water of the Chattahoochee river, so far as the riparian rights of *Georgia* are concerned, by locks, dams, canals, or otherwise; * * * half way across the Chattahoochee river, etc., and to use for that purpose the islands *contiguous* to their lands for abutments, etc. (Sec. IV of charter, Rec. p. 530.)

Exceptions and Provisos.

"*Provided,* That nothing in this Act shall be so construed as to give said corporators, or their successors, *the privilege to interfere with or disturb the vested rights* of any person or persons whomsoever, either on the East or West bank, or *the islands in,* the Chattahoochee river."—(Sec. II of Charter, Rec. p. 530.)

Powers Reserved and Denied.

1.—*To merge or consolidate* with any other corporation, whether under the same name or any other name;

2.—*To renew or extend* the said charter, after it should have expired by the limitation of thirty years, as fixed by the Georgia statute, *to-wit, March 21, 1896.*

The Huguley Manufacturing Company of Alabama, Chartered as such Corporation of Alabama, by and Under Orders of J. J. Robinson, Judge of Probate of Chambers County, Alabama.—Feb. 27, 1890.

It affirmatively appears on face of the record in this cause, that during the incumbency of J. J. Robinson, as Judge of Probate of Chambers County, Alabama, and under official orders duly issued by him in that capacity, on Feb. 27, 1890, a charter was regularly granted to the said corporation entitled "The Huguley Manufacturing Company," with its fixed principal office and place of business, according to its terms, "*in Chambers County, Alabama, near the Factory lately known as 'the Alabama and Georgia Mills.'*"

The complete proceedings thereunder attending the perfection of the organization of the said *Alabama* Company, in pursuance of the laws of Alabama, *including the subscriptions to its capital stock, the undertakings of the subscribers thereto, and the descriptions of the property conveyed or to be conveyed to said Alabama Company,* are all fully set forth in detail in the Record at pages 531-5.

No power or privilege to merge or consolidate with any other corporation, whether of same name or any other name, was provided in the said Alabama charter.

The Huguley Manufacturing Company of Georgia, Chartered as Such Corporation of Georgia.

A copy of the last mentioned charter is not in the record, but the fact of such incorporation in Georgia is charged in the original bill filed by J. J. Robinson, Trustee, against it in the Circuit Court of the United States for the Northern District of Georgia (Rec. p. 1.) It is also admitted in the answer filed by The Huguley Manufacturing Company of Georgia, to that bill, (Rec. p. 14.) It is also averred in the answer of the Riverdale Cotton Mills, *et al.*, to the Alabama bill, (Rec. p. 511.) It is also averred in the so-called ancillary bill of the Riverdale Cotton Mills, (Rec. p. 473). It is also averred in the petition for *certiorari*.

It is true that in the answer of The Huguley Manufacturing Company of Alabama, to said so-called ancillary bill (Par. 1, Rec. p. 506), it is stated *on information* that The Huguley Manufacturing Company of Georgia, the defendant to the Robinson bill, was not a corporation chartered under the laws of Georgia. But, it is distinctly averred in the 9th paragraph of said answer, (Rec. p. 508), that The Huguley Manufacturing Company, the Alabama corporation, was never a party to the said Robinson foreclosure suit.

It is now admitted by these respondents that the statement made on information in said answer was erroneous, though not intentionally so; that the fact is, that subsequent to the incorporation of The Huguley Manufacturing Company of Alabama, certain persons were incorporated under the same name, under the laws of Georgia, by the Superior Court of Troup County, Georgia, on April 29, 1890, on the petition of N. J. Hammond, attorney for the corporators. The scope of the respective charters were, however, widely divergent, the capital stock was different, and their places of business were different, one being in Chambers County, Alabama, the other at West Point, Georgia, and their incorporators were only in part the same.

As this Georgia charter is not in evidence, we can only take the fact shown by the record, that there was a Huguley Manufacturing Company, a corporation of Georgia, as well as a Huguley Manufacturing Company, a corporation of Alabama.

In the record of the Robinson suit, (Rec. p. 26,) there appears the testimony of N. J. Hammond, the attorney of record in that suit for The Huguley Manufacturing Company, defendant thereto. He there stated: "I advised in the procurement of the charter of The Huguley Manufacturing Company, and have been its attorney in this and other matters in

Georgia, since. When the bill in this case was filed, D. Jannopoulo, the president of The Huguley Manufacturing Company, instructed my firm to defend it for that company." The answer filed by Col. Hammond to the bill in that suit, (Rec. p. 14,) states specifically that it was the answer of the *Georgia* corporation.

While we insist that this testimony in the Robinson suit is not evidence against the Alabama corporations not parties to it, we call attention to it to show which corporation the attorney of record, in that case, claimed he was representing.

PRELIMINARY QUESTION.

IS THIS A PROPER CASE FOR REVIEW BY THE WRIT OF CERTIORARI?

Before any discussion of the questions raised in the Circuit Court of Appeals, we respectfully submit for the determination of this court, whether this case is of that class to which this court has, by its uniform decisions, restricted the issue of the writ of *certiorari* for the purposes of review, as distinguished from those cases where it is employed to perfect a record upon a suggestion of diminution; and whether, in the state of *this* record, the discretion in this court to issue such writ ought to be exercised.

As to the state of the record, it is to be observed, two of the judges of the United States Circuit Court of Appeals concurred in reversing, on a single point, the decree of the Federal Circuit Court in Georgia; and the third judge, while dissenting on that particular point, says: "There are some *other questions* raised in the assignments of error, the proper determination of which might require a *reversal* of the decree below."

We, therefore, submit to this court, that inasmuch as all the judges of the Circuit Court of Appeals concur that the decree of the Federal Court in Georgia should be, or might be, *reversed*, it is not at all improbable that the case upon such reversal might be determined upon some question or questions wholly different from those now sought to be reviewed in this court. In other words, will this court *anticipate*, under a writ of *certiorari*, which ought to be sparingly used, the determination of questions which, upon a reversal, (all the judges of the Circuit Court of Appeals agree should or might be had), may be entirely eliminated from the cause? We think the labors of a great court might well be confined to the consideration of such questions only as are necessary in a case before it, and that it is neither reasonable nor proper to appeal to it to anticipate questions that may never actually arise and which may prove to have been purely academic. It would seem that the mere fact of such a contingency would of itself, justify, if not require, a court whose labors are so constantly demanded in the settlement of pending, practical questions, to refuse to enter upon the determination of questions the settlement of which might prove to be of no aid to the lower court in its future proceedings.

That the decree of the Federal Court in Georgia should be reversed, is not merely a contingency, but, at least upon two points, seems to be clear:

1. The Circuit Court of the United States for the Northern District of Georgia, in its decree foreclosing the mortgage, under the Robinson bill, directed the sale of, and by its *commissioner* only, sold and, it is claimed, conveyed lands located wholly in Alabama, *without requiring any deed from the owner of the legal estate, the mortgagor corporation, or from the trustees.*

The decree was *in rem*, and not *in personam*, and against only the *Georgia* corporation, entitled "The Alabama and Georgia Manufacturing Company," which, under its charter, *did not and could not* own the Alabama property mortgaged, except certain riparian rights granted by the Legislature of Georgia to the Georgia corporation; whereas, the title in and to all the property in controversy had been throughout and was vested solely in the original *Alabama* corporation, also entitled "The Alabama and Georgia Manufacturing Company," but chartered and duly organized under the laws of *Alabama*, as a distinctly *independent* and *separate* corporate entity, with no power of merger with any other corporation;

2. In the cause under the so-called ancillary bill, in the Circuit Court of the United States for the Northern District of Georgia, the defendants (the two Alabama corporations) filed an answer to the bill.

There being no replication to this answer, its allegations must be taken as *true;* and there could be no evidence offered by the complainant to contradict any thing therein that is well alleged.

> Brown v. Pierce, 12 Wallace 212;
> Reynolds v. Crawfordville Bank, 112 U. S. 409.

Its allegations being taken as true, they undoubtedly ousted the jurisdiction of the Circuit Court, under the ancillary bill, and no valid decree could be rendered.

On the other hand, if complainant had filed a replication, it would have put it to the proof of every allegation in the bill. And if defendants had filed no answer, they would have been bound to take the bill *pro confesso*, before taking the final decree.

In either aspect, a reversal is inevitable.

That decree recites that, "this cause coming on further to be heard, it is submitted upon the bill *and proceedings in this cause,* ancillary to the proceedings in the cause lately pending in this court, of J. J. Robinson, as trustee, etc., vs. Alabama and Georgia Manufacturing Company, et al., and upon the record in said last named cause." (Rec. pp. 539, C. C. A. p. 557, 127 Fed. 502.)

It cannot, of course, be denied that this answer was part of the "proceedings" in the ancillary cause, and, therefore, by the very terms of the submission, was before the court. Not only before it, but in such shape that all of its allegations, including that (a) as to the citizenship of the Alabama corporations, and their separate existence in respect of the Georgia companies, and (b) the averments of the location of entire property in Alabama, and (c) the averments of the legal entitle being vested solely in the original *Alabama* corporation of The Alabama and Georgia Manufacturing Company, etc., —were all *admitted,* because not denied in any form.

Again, as declared by this court in "The Huguley Manufacturing Company v. The Galeton Cotton Mills," 184 U. S. 290, the case at bar is one of which the Circuit Court of the United States for the Northern District of Georgia, acquired jurisdiction only by virtue of the *diverse citizenship* of the parties and not by reason of any of the grounds set forth in section 5 of the judiciary act of March 3d, 1891, and that the judgment of the Circuit Court of Appeals, now sought to be reviewed by *certiorari,* was *final,* and therefore not subject to review in this court, except by writ of *certiorari* or some process *ejusdem generis* with *certiorari,* and issued, not as matter of right, but in the discretion of the court.

In respect of the exercise of such discretion, this court has said, it is "a branch of its jurisdiction which should be exercised sparingly and with great caution, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision." And the court adds, "Accordingly, although there have been many applications to this court for writs of *certiorari* to the Circuit Court of Appeals, under this provision, *two only* have been granted." In one of those two cases, the court shows, there was involved a grave question of international law, affecting the relations between the United States and a foreign country, and in the other, an important question as to the rules of navigation, in which two judges of the Circuit Court of Appeals had reversed a judgment of the District Court against the dissent of one of the three Circuit judges.

American Construction Co. v. Jacksonville, etc., Railway Company, 148 U. S. 372, citing Lau Ow Bew, Petitioner, 141 U. S. 583, and *in re* Woods, 143 U. S. 202.

In view of these decisions, we invite the attention of the court to the fact that Judge Pardee, in his dissenting opinion, expressly said, "*The* (italics *his*) question is, whether or no the bill brought by the Riverdale Cotton Mills, purchasers under decrees in Robinson v. The Alabama & Georgia Manufacturing Company, *et al.*, is an *ancillary* and *supplemental* bill, within the cognizance and jurisdiction of the Circuit Court."

It is entirely apparent from the record, that Judge Pardee has correctly stated *the* question, or, at least, the *main* question presented to and decided by the Circuit Court of Appeals, and *the* question the writ of *certiorari* brings up to this court for its decision.

We submit that the question, whether a bill be original or ancillary, is a mere question of *practice,* and not one of that grave, general or peculiar importance which alone can call into existence the extraordinary jurisdiction inhering in this court to review a final decree of the United States Circuit Court of Appeals, under a writ of *certiorari.*

If, however, we take the question for review under the writ of *certiorari* to be as stated in the petition filed in this court on March 14th, 1904, at pages 10 and 11, of the petition, we think it may be safely said that none of them, to use the language of this court, "fall within the category of questions of such gravity and general importance as to require the review of the conclusions of the Circuit Court of Appeals in respect to them."

Lau Ow Bew, Petitioner, 141 U. S. 583.

The questions, as stated in the petition, are as follows, to-wit:

"*First*—The effect of a decree or judgment against a corporation which is organized under the laws of several States, when sued as a corporation organized under the laws of one of those States.

"*Second*—The right of a defendant corporation which in good faith has been sued in a Circuit Court of the United States as organized under the laws of and as a citizen of one State and has admitted the truth of the allegations, to im-

peach the decree or judgment collaterally on the ground that it was in fact organized under the laws of another State, and that, therefore, the Circuit Court had no jurisdiction, because there was not the necessary diversity of citizenship.

"*Third*—The power of a Circuit Court of the United States to foreclose in one proceeding and by one sale a mortgage on real estate situated partly in one State and partly in another, when it has personal jurisdiction over the mortgagor.

"*Fourth*—The right of a Circuit Court of the United States to entertain as an ancillary bill a bill to restrain a suit brought in another court by persons bound by a decree of the Circuit Court to impeach a title derived under that decree, on grounds that already have been or might have been fully presented.

"*Fifth*—The effect of Revised Statutes, § 720, on the right of a Circuit Court of the United States to restrain proceedings in a State court brought by persons bound by a decree of the Circuit Court to impeach that decree and a title derived thereunder."

In respect of the first of these questions, it may be said, it is one as to which the decisions of this court and of the courts of nearly all jurisdictions are so uniform that it is now no question at all. The effect of a decree or judgment against a corporation which is organized, as an independent entity, under the laws of several States, *when sued as a corporation under the laws of one of those States*, is in the very nature of things to bind only the party or legal entity *sued*, and cannot bind the person, or legal entity of another State, *not sued*. As to this question, that uniformity of decision already obtains which the Petitioner urges as a ground for the issuance of the writ.

As to the second of Petitioner's questions, it is to be observed that this court can pass upon only such questions as are raised by the record; and, that however sincere and ingenious counsel may be in framing the questions they conceive or contend to be presented for review, the court will look to the whole record to determine what the real questions are.

Thus looking to the record, we respectfully insist that no such question can arise thereon as the second of Petitioner's questions. The assumption in this question that a corporation which *has been sued* in a Circuit Court of the United States, and admitted its citizenship, is undertaking to impeach the decree collaterally, on the ground that it was organized under the laws of another State, and that the court had no jurisdiction for the want of diversity of citizenship, is *not* the question which the record itself presents.

The Alabama and Georgia Manufacturing Company of *Alabama, was not sued* in the Circuit Court of the United States for the Northern District of Georgia; *not being sued, it did not admit* its citizenship to be in Georgia, nor is the corporation *that was sued* collaterally or otherwise attacking the decree.

The Alabama and Georgia Manufacturing Company, of *Alabama,* by which the bill for redemption was filed in the State Chancery Court of Alabama, was not a corporation *sued in good faith,* or otherwise, in the Federal Court in Georgia, nor is it in the Alabama suit, collaterally, or otherwise, impeaching the decree of the Federal Court as a decree against the *party sued* in that proceeding, viz., the *Georgia* corporation. The foreclosure proceedings in the Federal Court of Georgia are set forth in the Alabama bill not to impeach their effect as against the Alabama and Georgia Manufacturing Company of Georgia, which was the party thereto, but merely as inducement to show the interest, claimed by the parties to the Alabama bill, in the property in which the right of redemption was sought in the bill by the Alabama corporation. The Alabama bill does not deny the jurisdiction of the Federal Court over the Alabama and Georgia Manufacturing Company of Georgia, nor the effect of the said decree over that corporation, but does deny that, as to the *Alabama* corporation, the jurisdiction of that court, either as to its person or property, ever attached, because *it—the sole owner of the legal title to all the property in controversy*—was never a party or privy to the proceedings in the Federal Court in Georgia, and because the property is located *wholly in Alabama.*

The third question urged by Petitioner, viz., as to the power of a Circuit Court of the United States to foreclose, in one proceeding and by one sale, a mortgage on real estate situated partly in one State and partly within another, *when it has personal jurisdiction of the mortgagor,* is one that has never been denied either to the Federal or State courts, wherever the general principles of equity procedure obtain; but wherever that jurisdiction is sought to be exercised it has always been subject to the elementary maxim, "*Equity acts in personam.*"

Where a court of equity has jurisdiction of the *person* of the defendant, *having the legal title,* there can be no doubt of its power to compel the alienation of property beyond its territorial jurisdiction, through its control over the *person* of the defendant; not by its decree *in rem,* but by compelling the defendant, *having the legal title,* to convey. But, it is per-

fectly clear from the record in *this* cause, that the third question raised by the petition for *certiorari* is an *abstract* question. In the first place, the *Alabama* corporation of The Alabama and Georgia Manufacturing Company, *the owner of the property* embraced in the litigation, was never a party, and, therefore, *not* subject to the jurisdiction of the court, nor could it have been made a party without ousting the jurisdiction of the court in respect of the entire cause; and, lastly, if it should be conceded (but it is *not*,) that it was a party by privity or representation, the court proceeded *in rem* and *not in personam;* it rendered a decree of foreclosure and sale, and authorized a deed to the property, located wholly in another State, made by a master *commissioner* of its own appointment, instead of requiring the defendant, by a decree *in personam*, to execute a deed, or at least, to join in the commissioner's deed,—and this contemplates, of course, that the *true owner* of the said legal title should so join, and no other. As it was, in the case at bar, the deed of the master commissioner, alleged to have passed to Petitioner (but not proven,) was but the deed of the *court*, and could, no more than a decree of the court, operate to pass title to the property located without the State.

Watts v. Waddle, 6 Peters, 389;
Boyce v. Grundy, 9 Peters, 275;
Watkins v. Holman, 16 Peters, 26;
Carpenter v. Strange, 141 U. S. 87-106;
Lynde v. Columbus, C. & C. Ry. Co., 57 Fed. 993;
Guarantee Trust & Safe Deposit Co. v. Delta and Pine Land Co., 104 Fed. 5, (Decided May 30, 1901, by the Circuit Court of Appeals, for Fifth Circuit, and directly in point, *supra.*)
The Alabama and Georgia Mfg. Co. *et al.* v. The Riverdale Cotton Mills, Op. C. C. A., Rec. p. 560, 127 Fed. 497, 505.

As to the fourth question sought to be raised by the petition for *certiorari*, viz., the right of the Circuit Court of the United States to entertain as an ancillary bill a bill to restrain a suit brought in another court *by persons bound by a decree* of the Circuit Court, to impeach a title derived under that decree, on grounds that already have been or might have been presented, it may well be said, it is scarcely conceivable that the United States Circuit Court of Appeals could possibly have decided against such a proposition, and an inspection of the record shows it made no such decision. The point decided by the Circuit Court of Appeals, and on which this

fourth question is predicated, is that the United States Circuit Court for the Northern District of Georgia, had no jurisdiction to entertain a bill (original or ancillary,) to restrain a suit brought in a Chancery Court of Alabama for redemption under a mortgage or deed of trust, made by an Alabama corporation which was *not a party* to the foreclosure proceedings in Georgia, such bill being filed by the *Alabama* corporation of The Alabama and Georgia Manufacturing Company, the owner of the legal title to the property, and joined by The Huguley Manufacturing Company of Alabama, which likewise was not a party to such foreclosure proceedings. It is indeed difficult to understand how such a ruling presents a question of such grave or peculiar importance, or of such general interest, or which gives rise to such danger of such conflicting decisions, as to call for the exercise of the jurisdiction inhering in this court to review it by *certiorari*.

The fifth question is virtually the same as the fourth, and both are predicated upon the assumption (contradicted by the record), that the bill in the State Court in Alabama is filed by persons bound by the decree of the Federal Court in Georgia.

In the case from the 143 U. S. 202, *in re* Woods, *supra*, the questions sought to be reviewed by the writ of *certiorari*, were, (1), whether it is settled law in the State of Minnesota that a judgment of dismissal in a former suit, was not a bar to a second suit in the same cause of action; (2), whether the law in respect of recovery by a servant against his master for injuries received in the course of his employment was properly applied on the trial of a case. And the writ was denied by this court because the question did not "fall within the category of questions of such gravity and general importance as to require the review of the conclusions of the Circuit Court of Appeals in respect to them."

It may well be said that the real question sought to be reviewed by the writ in this case, in its last analysis, is whether the Respondents are estopped or precluded to file a bill for redemption in the State Court of Alabama, notwithstanding a decree of foreclosure of the mortgage rendered by the Federal Court in Georgia, to which proceedings the Respondents, the owner of the property mortgaged, were not parties or privies; a question which admits of no doubt, or, if it does, is of no more grave, public, general importance than that raised in the Woods case, and which this court refused to review by *certiorari*.

If we should state the question in still a different form, viz., whether, where two several States create corporations by legislative charters, composed of the same individuals, with the same management, and under the same name, but each with *different* vested rights and powers, is the resultant one corporate body in both States, or separate and distinct legal entities in each State, — we would not then have a question which is likely to arise as frequently, or to vex the Federal courts as much, as the question between employer and employe, involved in the Woods case, *supra*, and as to which uniformity of decision, because of the frequency of such cases, would be of more practical benefit than it would be in respect of the question we have last put, which so seldom comes before the courts.

We, however, respectfully urge, that by its former and repeated decisions, this court has already declared itself on this question, and there could be no lack of uniformity of decision if its deliverances are respected and followed,—as they have been by the Circuit Court of Appeals (majority opinion), in this case,—and as they should be in all the lower Federal Courts.

St. Louis & San Francisco Ry. Co. v. James, 161 U. S. 545;

Nashua & Lowell R. R. Co. v. Boston & Lowell R. R. Co., 136 U. S. 356;

Louisville, New Albany & Chicago Ry. Co. v. Louisville Trust Company, *et al.*, 174 U. S. 552.

After a careful review of many of the leading cases, this court, *in re* Nashua & Lowell Ry. Co. v. Boston & Lowell R. R. Co., cited *supra*, held as follows:

"From the cases cited it is evident that by the general law, "railroad companies created by two or more States, though "joined in their interest, in the operation of their roads, in "the issue of their stock, and in the division of their profits, "so as practically to be a single corporation, *do not lose their "identity;* and that each one has its existence and its standing in the courts of the country only by virtue of the legislation of the State by which it is created. The union of "name, of officers, of business and of property, does not "change their distinctive character as separate corporations."

A very interesting and instructive case on this question, and one which is also determinative, in favor of Respondents, of the vital point, on the merits of the case at bar, is that of the Louisville, New Albany & Chicago Ry. Co. v. Louisville Trust Co., *et al.*, 174 U. S. 552.

The facts in brief are, that the plaintiff was created and organized as a corporation under the laws of the State of Indiana, with the usual corporate powers, and also with power to *consolidate* with other railroad companies in other States, and to indorse or guarantee the bonds of other railway companies under the laws of any adjoining State.

Afterwards the same company, by its corporate Indiana name, was incorporated under the laws of the State of Kentucky, with all the powers of Kentucky corporations, and also with power to indorse or guarantee the bonds of other railroad companies and with powers of *consolidation*.

The same company was likewise incorporated and also *consolidated* under the laws of the State of Illinois by its Indiana corporate name.

Afterwards the Louisville, New Albany & Chicago Railway Company, by a contract with a construction company, in which the former was described as a corporation *under the laws of the States of Indiana and Kentucky*, and the latter as a corporation under the laws of the State of Kentucky, agreed, among other things, to guarantee the payment of the bonds of a Kentucky corporation, called, in short, the Beattyville Company, in consideration of the transfer by the latter company of three-fourths of its capital stock. The bonds were issued with the guaranty in due form, but there was irregularity in the issue of the bonds growing out of a failure of the issuing company to observe one of the requirements prescribed by the statute of Kentucky for the issue of railroad bonds. The bonds were sold to purchasers for value without notice, except that one of the defendants, the Louisville Trust Company, bought part of its bonds *without* notice and part *with notice*, of the infirmity in their issue.

A bill was filed in the Circuit Court of the United States for the district of Kentucky by the Louisville, New Albany & Chicago Railway Company, describing itself as a corporation duly organized and existing under the laws of the State of Indiana, against the Ohio Valley Improvement & Construction Company, the Richmond, Nicholasville, Irvine & Beatty Railway Company, and the Louisville Trust Company, all corporations of the State of Kentucky, and against other citizens of Kentucky, New York, and Illinois, for the cancel-

lation of the contract between the New Albany Company and the Construction Company, and of a guaranty indorsed by the New Albany Company in accordance with the contract upon bonds issued by the Beattyville Company and held by the other defendants, and for an injunction against suits thereon.

Pleas to the jurisdiction, asserting that the plaintiff was a corporation and citizen of Kentucky, as well as demurrers to the bill for want of equity, were filed and overruled.

The Circuit Court of Appeals, reversing the decree of the United States Circuit Court for the District of Kentucky, in its decree, among other things, declared: "This guaranty is binding only on the Louisville, New Albany & Chicago Railway Company, a corporation of Kentucky. It is *not* binding on the Louisville, New Albany & Chicago Railway Company, a corporation of Illinois."

This court, on review of the case, speaking through Mr. Justice Gray, among other things, declared as follows:

"This court has often recognized that a corporation of one "State may be made a corporation of another State by the "Legislature of that State, in regard to property and acts "within its territorial jurisdiction, (citing authorities.) "But this court has repeatedly said that, in order to make "a corporation, already in existence under the laws of one "State, a corporation of another State, 'the language used "must imply creation or adoption in such form as to confer "the power usually exercised over corporations by the "State, or by the Legislature, and such allegiance as a State "corporation owes to its creator. The mere grant of privi-"leges or powers to it as an existing corporation, without "more, does not do this."

Pennsylvania R. R. Co. v. St. Louis, Alton & Terre Haute R. R. Co., 118 U. S. 290, 296;
Goodlett v. Louisville & Nashville R. R. Co., 122 U. S. 391, 405;
St. Louis & San Francisco Ry. Co. v. James, 161 U. S. 545, 561.

"As to the jurisdiction, it being clear that the plaintiff "was *first* created a corporation of the State of Indiana, "even if it was afterwards created a corporation of the State "of Kentucky, also, it was and remained, for the purposes "of the jurisdiction of the courts of the United States, a "citizen of Indiana, the State by which it was *originally* "created. It could neither have brought suit as a corpora-

" tion of both States against a corporation or other citizen of " either State, nor could it have sued or *been sued* as a cor- " poration of Kentucky, in any court of the United States;

Ohio & Mississippi R. R. Co. v. Wheeler, 1 Black, 286;
St. Louis & San Francisco Ry. Co. v. James, 161 U. S. 545;
St. Joseph & G. I. R. R. Co. v. Steele, 167 U. S. 659, 663;
Barrow Steamship Co. v. Kane, 170 U. S. 100, 106."

Again, in speaking of the effect of the incorporation by a State of a corporation which was already incorporated in another State, the court said:

" But whatever might be the effect of such legislation, in " the way of subjecting foreign railroad companies to con- " trol and regulation by the local laws of Arkansas, we can " not conceive that it avails to create an Arkansas corpora- " tion out of a foreign corporation in such a sense as to " make it a citizen of Arkansas, within the meaning of the " Federal Constitution, so as to subject it as such to a suit " by a citizen of the State of its origin. In order to bring " such an artificial body as a corporation within the spirit " and letter of that Constitution, as construed by the decis- " ions of this court, it would be necessary to create it out of " natural persons, whose citizenship of the State creating it " would be imputed to the corporation itself."

In addition to the above quotations from the opinion of this court in said cause, it was further held, as follows:

" That court, in its opinion and decree, undertook to deter- " mine whether the Louisville, New Albany & Chicago Rail- " way Company was liable upon the guaranty as a corpora- " tion of Kentucky and as a corporation of Illinois. Apart " from the question whether it was a corporation of Ken- " tucky, and from the difficulty of treating the negotiable " guaranty upon each bond as itself divisible, binding the " guarantor as a corporation of one State, and not binding it " as a corporation of another State, there is an *insurmount- " able* objection to the decree in its present form.

" The Louisville, New Albany & Chicago Railway Company " is a party to this suit as a corporation of Indiana only, and " not as a corporation of Kentucky. It could not, either as a " corporation of both States, or as a corporation of Ken- " tucky only, have brought this suit against corporations and " citizens of Kentucky in the Circuit Court of the United

" States for the District of Kentucky, *without ousting the*
" *jurisdiction of the court.* (Authorities.) And citizens of
" Illinois also being defendants to the bill, it is equally im-
" possible to take jurisdiction of the plaintiff as a corpora-
" tion of Illinois. It necessarily follows, that *the rights and*
" *liabilities, if any, it may have as a corporation of Ken-*
" *tucky or as a corporation of Illinois, cannot be adjudicated*
" *in this case.*"

In respect of the case at bar, it is clear that the Georgia act creating the corporation entitled "The Alabama and Georgia Manufacturing Company," neither purported to create nor in effect created, the *Alabama* corporation of that name a corporation of the State of Georgia, and that if such had been the plain purpose and effect of the Georgia statute, the *Alabama* company would, nevertheless, have remained an *Alabama* corporation for all purposes of jurisdiction in the Federal Courts and the *Alabama* corporation could not sue *or be sued* in the Federal Court in Georgia, as a Georgia corporation. It could only sue and be sued as an *Alabama* corporation, and in the particular case at bar, it could *not* be sued in that court at all, for the reason that Robinson, the complainant, was, himself, a citizen of Alabama, and so described in the bill.

Again, The Alabama and Georgia Manufacturing Company, of the State of *Georgia, alone,* having been a party to that bill, it follows according to the principles declared by this court in the case above quoted from, that even if the mortgage to Robinson and Huguley, as trustees, had been executed by both the Georgia and Alabama corporations, it was not within the power or jurisdiction of the Federal Circuit Court in Georgia, in the Robinson case, by its decree, to adjudicate "the rights and liabilities, if any," of the *Alabama* corporation, in respect of the mortgage which that court undertook to foreclose.

It is to be remembered that the guaranty by the Louisville, New Albany & Chicago Railway Company of the bonds of the construction company, described the former company as a corporation *both under the laws of the State of Indiana and of the State of Kentucky,* yet, this court held that the right and liability of that company, as a corporation of Kentucky, could not be adjudicated by the Federal Court in Kentucky, under a bill field by said company as a corporation under the laws of Indiana.

In the case at bar, the mortgage sought to be foreclosed in the Federal Court in Georgia, neither purports to have been

executed by the *Alabama* corporation, nor is it so averred in the bill, but on the contrary, the bill avers it to have been executed by the *Georgia* corporation, only.

In view of these facts, and the decision of this court in the case above referred to, it requires no argument to show that the *rights and liabilities* of the Alabama and Georgia Manufacturing Company, as a corporation under the laws of *Alabama,* are unaffected by the decree of foreclosure in the Robinson case, rendered by the Federal Court in Georgia, and that being unaffected thereby, it had the right to resort to the Chancery Court in Alabama, to assert those rights, and it was without the power of the Federal Court in Georgia, to enjoin its proceedings in the said State Court of Alabama, instituted for the enforcement of those rights.

The same rule of decision prevails in Alabama.

Kahl v. Memphis & Charleston R. R. Co., 95 Ala. 337.

In the case last cited, it is held that the Memphis & Charleston Railroad Company, incorporated by legislative acts in Alabama, Tennessee, and Mississippi, though under the same name, owned by the same stockholders, invested with like franchises and operated under the same management, is composed of three several entities, and the averment that it is a unit as a corporation is a mere statement of a *legal conclusion* unsupported by the facts.

It is to be observed, however, that in stating the question as we have last above, it is most strongly put against the Respondents, and that the fact is, in the case at bar, the legislatures of the States of Alabama and Georgia did not enact *identical* statutes, or charters,—but the provisions of the two respective charters are *different materially and conspicuously in terms and legal effect,* as pointed out under our preliminary statement of facts hereinabove, at pages 9-15 of this brief.

> See Record, pp. 494-5; 529-531; and the Opinion of the Circuit Court of Appeals, in this cause, at pp. 551-4, wherein the text of each of the said charters is set forth in full; 127 Fed. 497-8-9.

As distinguished and differentiated at pages 9-15 of this brief (to which the particular attention of this court is respectfully invoked,) there can certainly be no question that the language of each charter creates a separate, complete corporation; that it is not the case of a corporation

created by one State and the same corporation *licensed* to carry on its business by and in another State, but each statute, *ex vi termini*, creates a *separate, independent corporate entity*, with its franchise to exist as a corporate body, its franchise to do business, and its *habitat* derived, each, from its several and distinct charter.

Nor is it the case of a *consolidated* company, created under statute in both States to take over the franchises, properties, rights and liabilities of two separate corporations created by different States, nor the surrender of jurisdiction by either State to the other over a consolidated company, or over the corporate lands and property within its territory.

Of however great importance, therefore, this court may deem the general question as to the power of two different States to create by joint legislative action one corporate unit, with like corporate existence and capacity in both States, it is quite manifest, *that* is not *the* question which the writ of *certiorari* will bring before it, but, on the contrary, the *real* question, brought up by the writ for consideration, is one, in respect of which the decisions of the Federal Courts, and of nearly all of the State Courts, are uniform.

It is respectfully suggested to the court, that inasmuch as the matter of granting writs of *certiorari*, for the purposes of general review, in cases where no appeal or writ of error will lie, is one of discretion in this court, it is highly important that its exercise should be limited to clearly defined classes of cases, beyond which the court will not depart. If it is to be understood that there is no fixed rule governing the court's discretion in such cases, it can scarcely be otherwise than that applications of this character will greatly multiply in the future, to such an extent, indeed, that litigants having no other recourse and influenced by a desperate hope, will, regardless of the nature of the questions sought to be reviewed, seek to procure a favorable exercise of the court's discretion in their cases.

It would seem, the only wise and safe rule is that adopted in the cases above cited.

ARGUMENT ON THE MERITS.

I.

WHAT CONSTITUTES THE RECORD BEFORE THIS COURT FOR REVIEW.

If this court should conclude that the petition presents questions both proper and necessary for review by writ of *certiorari*, then it becomes essential to consider *what* constitutes the record before this court for review.

We think it consists of the following, to-wit:

1.—The entire record of the proceedings (for redemption, etc.), in the case of The Alabama and Georgia Manufacturing Company of Alabama, and The Huguley Manufacturing Company of Alabama, v. The West Point Manufacturing Company, The Riverdale Cotton Mills, *et al.*, in the Chancery Court of Alabama, (Rec. pp. 486-500.)

2.—The entire record of the proceedings in the Federal Circuit Court of Georgia, in the case of The Riverdale Cotton Mills v. The Alabama and Georgia Manufacturing Company, of Alabama, and The Huguley Manufacturing Company, of Alabama, complainants in the said Alabama suit, to enjoin them from prosecuting said suit in the Alabama State Court, said record including, as we insist, the answer of the two Respondents to the bill, with exhibits, (Rec. pp. 473-550); and,

3.—The record in the United States Circuit Court of Appeals, and Opinion thereon. (Rec. pp. 550-574, 127 Fed. 497-509.)

4.—As to the record of the former proceedings in the United States Circuit Court for the Northern District of Georgia, in the case of J. J. Robinson, Trustee, v. The Alabama and Georgia Manufacturing Company of Georgia, *et. al.*, (Rec. pp.1-472,) it is respectfully submitted that, while the same was *never offered in evidence* during the progress of the aforementioned causes in either the Alabama State Chancery Court or in the Georgia Circuit Federal Court, yet, the said former record was before the said Federal Circuit Court in Georgia, and properly considered by it on the final hearing, as part of the pleading, as evidence in the records of the court of which it would take judicial notice; and,

it was evidence, only, of the fact that such and such matters were in issue between the parties to *that* cause, that such matters were adjudicated between said parties, and that certain evidence was taken therein. *But*, it was *not* evidence in the suit instituted by The Riverdale Cotton Mills, of the truth of the facts about which evidence had been given by either party, nor was the adjudication binding upon any other person not a party to the said Robinson suit, or holding under such party.

Louisville, New Albany & Chicago Ry. Co. v. Louisville Trust Co., 174 U. S. 552;
Pardee v. Aldridge, 189 U. S. 429-432, (decided March 16, 1903);
Greenleaf on Evidence, Vol. 1, §§ 522, 523, 538, 539;
Mayfield's Digest of Laws of Alabama, Vol. 3, §§ 1884, 1885, and 1888, and authorities cited thereunder, including: Snodgrass v. Branch Bank of Decatur, 25 Ala. 161.

The material facts, as gathered in these records, are as stated in the first part of this brief, at pages 1, *et seq.*, and will not be repeated here.

II.

THE LEGISLATURE OF THE TWO STATES OF ALABAMA AND GEORGIA DID NOT GREATE THE ALABAMA AND GEORGIA MANUFACTURING COMPANY ONE CORPORATE ENTITY, NOR DOES THAT STATUS ARISE, FROM THE LEGISLATION OF THE TWO STATES, ACCORDING TO THE WEIGHT OF AUTHORITY IN THIS COUNTRY.

It is plain, from what has heretofore been said, that the two corporations, under the name of "The Alabama and Georgia Manufacturing Company," did not, *in fact*, constitute *one* corporation; and, in addition to the authorities heretofore cited, to show they did not, *in law*, constitute *one* corporation, we cite the following:

In "Carter on Jurisdiction of Federal Courts," p. 79, the author quotes approvingly Judge Thayer, of the Eighth Circuit, in the following language:

" Although opposed to a *dictum* of the Supreme Court in " Railroad Co. v. Harris, 12 Wall. 65, it is now well settled " that two States cannot join in creating a single corpora- " tion. This is well expressed by Judge Thayer in a recent " opinion in the Circuit Court of Appeals for the Eighth Cir- " cuit, where it is said: 'At this day it must be regarded as " settled beyond doubt or controversy that *two* States of this " Union *cannot* by their joint action, create a corporation " which will be regarded as a *single* corporate entity, and, " for jurisdictional purposes, a citizen of each State which " joined in creating it. One State may create a corporation " of a given name, and the legislature of an adjoining State " may declare that the same legal entity shall be or become a " corporation of that State as well, and be entitled to exer- " cise within its borders, by the same board of directors and " officers, all of its corporate functions. *Nevertheless*, the re- " sult of such legislation is *not* to create a *single* corporation, " but *two* corporations of the same name, having a different " paternity'."

Mo. Pac. Ry. Co. v. Meeh, 32 U. S. App. 691, 16 C. C. A. 510;

Chicago, etc. R. R. Co. v. The Auditor General, 53 Mich, 79."

And the author adds:

" Certainly the logic of the situation is found in Ohio & " Miss. R. Co. v. Wheeler, (1 Black. 297,) and *not* in the Har- " ris case: in any view of our system of seperate States, it is " opposed to every fundamental principle to imagine such a " co-ordinate legislative act as would result in the creation of " *one* corporate entity."

Whether Judge Thayer be correct or not in speaking of that portion of the opinion in Railroad Co. v. Harris, to which he alludes as *dictum*, it would not affect the result in the case at bar, inasmuch as there has never been any legislation on the part of the States of Alabama and Georgia looking to the *consolidation* of the two corporations known, each as "The Alabama and Georgia Manufacturing Company," nor even the vesting of the same corporate powers in each. It is certain there is nothing in either charter indicating such a purpose, nor having such an effect, and the record discloses no other legislation by either the State of Georgia or Alabama to accomplish that end.

In Grangers Life and Health Insurance Co. v. Kamper, 73 Ala. 325, it was held by the Supreme Court of Alabama, as follows, to-wit:

" A corporation can have no legal existence beyond the " territorial boundaries of the sovereignty by which it is cre- " ated, and it can transact business within the scope of its " powers in other sovereignties only on such terms and con- " ditions as such sovereignties may provide; and whether " only terms and conditions are prescribed, upon which a " foreign corporation is permitted to exercise its powers, " whether there is concurrent action of two or more States " in the creation of a single corporation, or whether a domes- " tic corporation is created, is a question of legislative intent.

" The Grangers Life and Health Insurance Company hav- " ing been incorporated in this State, the legislature of the " State of Mississippi afterwards passed an act, entitled, 'An " Act to authorize the Grangers Life and Health Insurance " Company to create and establish branch departments in " this State,' and providing that such company 'incorporated " by and under the laws of the State of Alabama, be and the " same is hereby authorized and empowered to create and es- " tablish in this State one or more branch departments there- " of, whenever there shall be subscribed to, and paid into said " company, or secured to the satisfaction of the president and " general board of directors thereof, one hundred thousand " dollars as capital stock for such branch department, so cre- " ated and established, the said stock to be subscribed for and " owned by, and the directors of any such branch depart- " ment to be, citizens of the State of Mississippi'; and fur- " ther providing that whenever any such department or de- " partments shall be created and established, the said com- " pany 'shall be regarded as a home company, and shall be " entitled to, and may exercise and employ all the rights and " privileges, immunities and exemptions of life insurance " companies incorporated by the laws of the State of Miss- " issippi,' and making it the duty of the Auditor of said State " on the creation and establishment of any such branch de- " partment, to give to the officers or agents of said company " a certificate 'stating the same, and authorizing it to do " business as a domestic life insurance company of Mississ- " ippi;'

" Held—

" (1.)—That the effect of this act was not merely to license, " or to enable the corporation formed in this State to trans- " act business and exercise its powers in Mississippi, but to " create a corporation having the same name, and like fran- " chises as the corporation formed in this State;

" (2.)—That while there may have been a purpose that of " the domestic corporation thus formed the corporation of " this State should be a constituent, and that some undefined " relations should exist between the two corporations, this " purpose did not change the scope, operation and effect of " the act, but that the two corporations were *distinct legal* " *entities*, and the act of incorporation of each was confined " to the territorial limits of the sovereignty from which it " proceeded."

Notwithstanding the concurrent legislation of the two States, as above stated, the court held not only that two separate, distinct corporations were thereby created, but, further, that *a deed of assignment, executed by the Alabama corporation, vested no title in the assignee to the property in Mississippi.*

It might well be argued that if the concurrent legislation of the two States in respect of this insurance company, notwithstanding the provisions of the statute of Mississippi, recognizing uniformity of purpose and interest in the two companies, created two separate corporations to such an extent that a general assignment, executed by the Alabama corporation, did not pass to the assignee the property in Mississippi, then, the two statutes of Georgia and Alabama, creating the two corporations, known as 'The Alabama and Georgia Manufacturing Company," without any purpose or interest, must have created two separate corporations so entirely distinct as that any mortgage or deed of trust executed by one does not affect the property of the other in a different State; and it is only necessary to add in this connection, that the only mortgage or deed of trust claimed by Petitioner to have been executed, in the case at bar, was executed only by the *Georgia* company, and that *all* of the property embraced in the mortgage is located in *Alabama;* not only located in Alabama, but was all paid for with money subscribed to the capital stock of the *Alabama* corporation, and paid into *its* treasury, and the legal title there and then, vested in *it*, to-wit, The Alabama and Georgia Manufacturing Company *of the State of Alabama, Chambers County.*"—(See Rec. pp. 486-7, 505, and see Statement of Facts, herein, at page 10.)

We quote from the opinion of the Supreme Court of Alabama, as follows:

" Whatever may be the true character of the assignments, " it was inoperative to pass property, rights of property, or " choses in action to which the assignor had no title. If it

" be true, the subscriptions of the appellees were for the " stock of the Mississippi corporation, the notes of the appel- " lees, unless they had been negotiated to the corporation of " *this* State, *did not pass by it.*"

It cannot be successfully contended that the Alabama property, involved in the case at bar, acquired by the *Alabama* Company, with the money paid into its treasury for its *capital stock*, could belong to, or be mortgaged by, the Georgia corporation, unless it could be shown there was a transfer or conveyance by the Alabama corporation to the Georgia corporation, and so far as the record discloses there is not even a pretense of such a transfer or conveyance, and, as matter of fact, there was none.

See also Mo. Pac. Ry. Co. v. Meeh, 16 C. C. A. 510.

Judge Cooley, in Chicago & N. W. Ry. Co. v. Auditor, 53 Mich, p. 91, says:

" It is impossible to conceive of one joint act performed " simultaneously by two sovereign States, which shall bring " a single corporation into being, except, it be by compact or " treaty."

In Quincy Railroad Bridge Co. v. Adams Co., 88 Ill. 615, the court said:

" Two States have no power to unite in passing any legis- " lative act. It is impossible, in the very nature of their or- " ganization that they can so fuse themselves into a single " sovereignty, and, as such, create a body politic which shall " be a corporation of the two States, without being a cor- " poration of each State or of either State."

It is further said in the same case:

" The only possible status of a company acting under char- " ters from two States is that it is an association incorpor- " ated in and by each of the States; and, when acting as a " corporation in either of the States, it acts under the auth- " ority of the charter of the State in which it is then acting, " and that only, the legislation of the other State having no " operation beyond its territorial limit."

III.

LANDS AND PROPERTY IN CONTROVERSY ALL SITUATED WHOLLY WITHIN THE STATE OF ALABAMA.

While it was always a matter of common knowledge, and a fact conceded by the Petitioner itself (Rec. pp. 484, 516-7,) that all that portion of the lands and property in controversy described in the mortgage "as containing sixty-five and 23-100 acres, more or less, * * * including all tenements and improvements, including the cotton mill and machinery therein or thereto belonging," etc., were situated wholly *"in Chambers County, State of Alabama,"* (Rec. pp 5-6, 488, 490-1, 498-9, and 507,) on the other hand, up to the filing of the suit by the said two Alabama corporations in the Chancery State Court of Alabama, against the Petitioner and others, the impression had obtained for years, that the other portion of the said lands, consisting only of certain detached and isolated islands, opposite to the factory plant and village proper, were as also described in said mortgage, situate "in the 20th District of Harris County, Georgia."

But, an investigation of the official maps of survey and the accompanying field notes (made in 1829-1834, when the State of Georgia ceded to the United States all that territory west of the Chattahoochee river, out of which Alabama was carved), on file in the Government General Land Office at Washington, D. C., (Rec. p. 507,) and also in the office of the Secretary of State of Alabama, at Montgomery, Ala., (Rec. pp. 490-1,) all duly certified and in evidence at pp. 498-9 of this record, developed that even those said islands were, in fact, actually situated in the state of *Alabama.* This was due to the fact that the said so-called islands, and described as such in the said mortgage, originally did not exist at all, (not appearing on the large map of survey of the Chattahoochee river in the Land Office at Washington, *supra,*) but were formed *artificially,* in the manner fully explained at pages 490-1 of the Record in this cause; and, after being so artificially created, said islands really did not lie in the bed of the *main* stream of the Chattahoochee river, but between the latter and a certain tributary leading thereto and flowing from the Alabama, or western, side, the intervening land falling within the jurisdiction of *Alabama.* (See the evidence as fully set out in the Record at the pages above cited.)

"Courts judicially know the location of the various townships and ranges of the Government survey of the lands in the State."

Mayfield's Digest of Laws of Alabama, Vol. 3, p. 442, citing Webb v. Mullins, 78 Ala. 115.

"Courts will take judicial notice of public surveys, maps, and plats of public lands, the location and relative position of such lands so surveyed, mapped," etc.

Mayfield's Digest of Laws of Alabama, Vol. 3, p. 442, citing Knabe v. Burden, 88 Ala. 440 (7 So. 92);
Chambers v. Ringstaff, 69 Ala. 140;
Schoen v. Kelly, 112 Ala. 323 (26 So. 4).

"And judicial notice is conclusive."
Schollenberger v. Pennsylvania, 171 U. S. 1;
17 Ency. Law (2d ed.), 911, note 2.

In this connection, the attention of the court is respectfully invited to the following evidence on the face of the record in this cause:

(a)—In the answer to the bill,

" Respondents deny that said property (described as being) in " Alabama and in Georgia, are parts of an '*indivisible*' whole. " On the contrary, they aver that the island described in " said mortgage as 'All of a large island in the Chattahoo- " chee river, designated as Island No. Six (6,) containing " one hundred and forty-three acres, more or less, *is not* " necessary to or used in connection with the operation of " said manufacturing plant, but has long been rented from " year to year for *agricultural* purposes." (Rec. p. 508.)

As matter of fact, barring this one island, representing not *one per cent.* of the value of the entire property at issue, the other two islands are low, marshy lands, and utterly valueless.

(b)—Under Sections II and VI of the charter creating the Georgia Company, it and its successors are expressly inhibited in terms from interfering with or disturbing the vested rights of other persons in said *islands*, specifically described as *"contiguous to"* possible acquisitions in Georgia.

(c)—And lastly, that wherever situate, the evidence shows that the title in and to all the lands in controversy (including *islands*,) was vested solely in the pre-existing *Alabama* corporation. (Rec. pp. 486-7, 505, and see p. 530.)

IV.

THE DECREE OF FORECLOSURE, RENDERED BY THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, BEING *IN REM*, ONLY, AND NOT ACCOMPANIED OR FOLLOWED BY THE REQUIREMENT OF A CONVEYANCE FROM THE OWNER OF THE LEGAL TITLE, OR MORTGAGOR CORPORATION, OR THE TRUSTEES, DID NOT OPERATE TO CONVEY ANY TITLE TO THE MORTGAGED LANDS OR PROPERTY, LOCATED IN THE STATE OF ALABAMA.

This branch of the argument is so completely covered in the brief of associate counsel, Mr. Erwin, that we will confine our argument here, in the main, to meeting contention of opposing counsel and their reliance upon the effectiveness of the decree *in rem* against the *Georgia* corporation of The Alabama and Georgia Manufacturing Company, such as was rendered in the case at bar; and incidentally, we shall undertake to differentiate between the case of "*Muller v. Dows*," 94 U. S. 444,—the only authority on which counsel for Petitioner seem to rely—and the case at bar, and shall point out the many material and vital facts in favor of the latter that do not enter into or characterize the said "*Muller v. Dows*" case.

In Railroad Company v. Swasey, 23 Wall. 411, touching upon the "Forms and Terms of a Decree," this court declared, that "Circuit Courts should exercise care in preparation of decrees in foreclosure suits."

And, in this connection, we note preliminarily, that, in the recent case of Julian v. Central Trust Company, 193 U. S. 93, (decided Feb. 23, 1904,) this court, at page 101, takes occasion to quote approvingly the text of what it holds to be the proper form and terms of a decree in equity.

A glance at this latter decree, as contrasted with the divers decrees of sale and of confirmation entered in the case at bar, namely, of March 30, 1895, (Rec. pp. 356, 359-362,) of June 25, 1896, (Rec. pp. 395-6,) and of Oct. 15, 1898, (Rec. pp. 445-7,) quoted (in part,) in the first branch of our statement of the case, at pages 4, 5, of this brief, will show how far the said "forms and terms" of the decrees as entered in the case at bar, fail and fall short of measuring up to the standard that was approved by this court in the Julian case, *supra*.

DIFFERENTIATING BETWEEN "MULLER V. DOWS" AND THE CASE AT BAR.

In distinguishing between these two cases, *supra*, we shall endeavor to accomplish this the more clearly and satisfactorily, by placing in juxta-position, on the one hand, first, the facts characterizing the case of Muller v. Dows, as made to appear in the statement of the case by Mr. Justice Strong, and on the other hand, the salient facts characterizing the case at bar, following *seriatim* immediately after the former, in their order.

1.—In *that* case,—(The Muller v. Dows)—a suit was brought in the Circuit Court of the United States for the District of Iowa, by citizens of Missouri and New York, against *two* corporations, alleged to be *Iowa* corporations. It appears that one of the defendant corporations, the Chicago & Southwestern Railway Company, was formed by the *consolidation* of *two* corporations of the same name, chartered under the laws of Missouri and Iowa respectively, and *consolidated* under the authority of the laws of each State, which provided that such railroads were authorized to "merge and consolidate the stock of the respective companies, making *one* joint stock company of the railroads thus connected." (Judge Strong, *supra.*)

On the other hand, in the case at bar, there never has been a *consolidation* of the original Alabama company with the later Georgia company, of the same name, and, further, the Circuit Court in Georgia, never had or could have had jurisdiction of the *Alabama* corporation in the said Robinson suit.

2.—This was an action to foreclose a mortgage given by this *consolidated* company upon its line of railroad, *"which crossed the State line and was within two States."* That is to say, a part of which was within the State over which the court had jurisdiction (Iowa,) but a part of the line *extended into another* State (Missouri.)

In case at bar, this was an action to foreclose a mortgage given by the original *Alabama* company, namely, "The Alabama and Georgia Manufacturing Company *of the State of Alabama, Chambers County,"* which, as sole owner of the title, was the only possible valid mortgagor. Said mort-

gage covered a manufacturing plant situate wholly in *Alabama,*—not one "which crossed the State line and was within *two* States." That is to say, *no* part of it was within the jurisdiction of the Circuit Court in Georgia.

3.—The entire line was "subject to one mortgage," and covered by one trust deed.

In case at bar, while the entire property was likewise "subject to one mortgage," and covered by one trust deed, that mortgage was not executed by any *consolidated* company, but solely by the *single* Alabama company, and covered property wholly in Alabama.

4.—Said trust deed "included the *franchises* of the company, which made the mortgage, said franchises being incapable of *division.*"

In case at bar, while the said trust deed "included the *franchises* of the company which made the mortgage," to-wit, the original Alabama company, all the rights, title and interest vested under the franchise of said Alabama Company, which embraced all the property in controversy, *per contra, were* capable of *division,* and completely separate from those claimed by Petitioner on behalf of the said Georgia Company of same name. And this, because, said Georgia Company, by the terms of the charter creating it, *could not* own any lands or erect any buildings except on the *East* (or Georgia) side of the river, and *did not* acquire any such lands or construct any such buildings, in Georgia.

5.—"The *Mortgagors* here were within the jurisdiction of the court."

In case at bar, the *Mortgagor* here,—to-wit, The *Alabama* Company,—was *not* within the jurisdiction of the Circuit Court of Georgia.

6.—"So were the Trustees of the mortgage. It was at the instance of the *latter* (Trustees) that the *master* was ordered to make the sale."

In case at bar, it was *not* at the instance of the Trustees that the *"Commissioner"* was ordered to make the sale in issue, but rather by force of the decree of the court proceeding *in rem.* Or, as described in the opinion of the Circuit Judge:

"The case has really more the appearance of the *holders* of these obligations proceeding through the Trustee, as a *mere nominal party,* than the act of the Trustee, in the discharge of the duty incumbent upon him by virtue of a trust which he had assumed and agreed to carry out, (Rec. p. 129.)" Whereas, in the *Muller v. Dows* case, "the title in *that* case, was transferred by the courts compelling the execution of a *power of sale,* and not by force of the *decree.*"

7.—"The *'Mortgagors'* who were foreclosed, were enjoined against claiming the property after the Master's sale, and *directed to make a deed in further assurance.*"

In case at bar, the real and only possible *valid 'Mortgagor,'* to-wit, the *Alabama Company,* was never foreclosed at all, in fact or in law, it never having been made party defendant in any suit whatever.

And certainly, neither *it,* the *Alabama* Company, or the owner of the equity of redemption or its assignee, or the trustees, or anybody else, either or all, were ever "*directed to make deed in further assurance.*" Indeed, even in respect of the *Georgia* Companies, only, so made parties, it is noteworthy that the said Circuit Court, to use the language of Mr. Justice Holmes in Pardee v. Aldridge, 189 U. S. 429-432, never essayed to "*work out its decrees by orders to the defendants.*"

On the contrary, the prayer in the original bill asked for a foreclosure *in rem,* against the *Georgia* corporation of The Alabama and Georgia Manufacturing Company, and *it* only, (which did not and could not own the property mortgaged,) and there was no decree *in personam* against *anybody,* whether a person or corporation of Alabama, or of Georgia, or of Missouri—only the decree *in rem* against the sole defendant therein, the said *Georgia* Company, (Rec. pp. 3, 356-362, 395-6, 445-7, and p. 488.)

So much for the more material points characterizing the two said cases, so far as they can be paralleled. But, in addition, and as further cumulative in favor of the case at bar, the following new and independent features should be noted as obtaining in the latter which are not at all found in the *Muller v. Dows* case. We cite only the more striking features of disparity, the Assignments of Error pointing out, (Rec. pp. 542-6,) and the brief of associate counsel, Mr. Erwin, emphasizing many others.

1.—(a) The subject matter of the controversy (in case at bar) lies beyond the limits of the District Federal Court in Georgia, and where the process of that court cannot reach the *locus in quo;*

(b) Moreover, the rights of the *mortgagor* and *sole owner* of the property mortgaged, to-wit, The Alabama and Georgia Manufacturing Company of *Alabama,"* and of The Huguley Manufacturing Company of *Alabama,* were seriously involved in the controversy, and *they* were not made parties to the Robinson suit. Whereas, if so joined, the jurisdiction of said court would have been necessarily ousted, as they are corporations of Alabama, and as co-defendants, would be citizens of the same State as the plaintiff (Robinson.) *But,* they must be joined in the suit as their interests are heavily involved."

[Paraphrasing the familiar case of Northern Indiana R. Co. v. Mich. Central R. Co., 15 How. 233, holding, under such statement of facts as stated *supra,* "The Circuit Court had *no* jurisdiction of the case."]

2.—The charter of the *Georgia* corporation of The Alabama and Georgia Manufacturing Company, which was granted by Act of the General Assembly of Georgia, of March 21, 1866, *expired by statutory limitation* in thirty years from its date, to-wit, on March 21, 1896, and the corporation then *died.* (Act of Jan. 1, 1863; Code of Georgia, 1895, § 1851; 49 Ga. 151; 54 Ga. 404; 87 Ga. 533.)

Notwithstanding this, without making *new* parties, and without the appointment of a *receiver,* pursuant to the Code, (1895,) p. 32, § 1886, (Acts, 1855-6, p. 226, § 1975,)—the property was offered for sale May 6, 1896, (Rec. p. 390,) and a *conditional* decree of confirmation entered June 25, 1896, (Rec. pp. 395-6,) but no compliance meantime having been made, eventually, to-wit, as late as Oct. 15, 1898, another decree was passed—also *conditional* upon events *to be* performed *in futuro,* (Rec. pp. 442-4, 445-7.)

"Of course, a corporation *cannot* take or make a conveyance of property *after* its dissolution."

Clark & Marshall, Vol. 2, citing Bradley v. Reppell, 133 Mo. 545; 54 Am. St. Rep. 685; see also, to same effect:

May v. State Bank of North Carolina, 2 Rob. (Va.), 40 Am. Dec. 726;

Pendleton v. Russell, 144 U. S. 645;

Moultrie v. Smiley, 16 Ga. 303;
Selma (Ala.) National Bank v. Colby, 21 Wall. 609;
Nelson v. Hubbard, 96 Ala. 238.

3.—In case at bar, there is no evidence that the terms were ever complied with and the sale completed, or that any deed ever was made to Petitioner—even by the Commissioner, on behalf of said *dead Georgia* corporation, (assuming latter had any property to be conveyed.)

" It is the *deed* made to the purchaser actually transfer-
" ring the title of the parties to the suit, that terminates
" the mortgagor's equity of redemption."

Chicago, etc., R. R. Co. v. Fosdick, 106 U. S. 71;
Brine v. Ins. Co., 96 U. S. 627;
Williamson v. Berry, 8 How. 495-6;
Curtis v. Millard, 14 Iowa, 129-130; 58 Iowa, 133;
Daniels Ch. Pr., § 1265; and cases cited.

Having thus first differentiated between the two cases in point with respect of the *facts* characterizing each in contradistinction to the other, we will address ourselves to the legal principles applicable thereto, and by quoting briefly from the opinion in said cause of Muller v. Dows itself, and from other decisions of this court and those on the Circuit, demonstrate that the said adjudication in Muller v. Dows is not only *not* against the contention assumed by these Respondents, but, to the contrary, is *for* us, and in harmony with all the other adjudications had in the Supreme Court, and those delivered in the other courts, both Federal and State:

Mr. Justice Strong, after reciting the foregoing facts as found in the case of Muller v. Dows, substantially reproduced hereinabove, said:

" 1.—With these laws in force the *consolidation* of the
" Chicago & Southwestern Railway was effected. The *two*
" companies became *one*. But in the State of Iowa, that
" *one* was an *Iowa* corporation, existing under the laws of
" that State alone." (P. 447.)

It was further held that while for the purpose of Federal Court jurisdiction, that *one* corporation was to be treated as

a citizen of Iowa, when sued in Iowa, that nevertheless the Circuit Court of Iowa had complete jurisdiction of the *person* of that *'one'* corporation, even in respect to rights of property held in other States. The court says:

" 2.—It is here undoubtedly a recognized doctrine that a " court of equity sitting in a state, and *having jurisdiction* " *of the person,* may decree a conveyance *by him* of land in " another State, and may enforce the decree by process " against the defendant. True, *it cannot send its process in-* " *to that other State, nor can it deliver possession of land in* " *another jurisdiction,* but it can command and enforce a " transfer of the title. And there *seems* to be no reason why " it cannot, in a *proper* case, effect the transfer by the " agency of the *Trustees,* when they are complainants," " * * * (summing up.)

" And the court can direct the *Trustees* to make a deed " to the purchaser *in confirmation of the sale.* We cannot " therefore, declare void the decree which was made." (pp. " 449-450.)

In that case, it will be observed, there was no effort to acquire jurisdiction over a corporation of *another* State by *ancillary* proceedings, or otherwise, but by reason of *consolidation,* there being but the *one* corporation, and the court *having complete jurisdiction* over the *person of that one,* the sole question was whether it could, under a trust deed, decree a sale of the railroads in *both* States and compel a conveyance.

In Lynde v. Columbus C. & I. Ry. Co., 57 Fed. 993, it is held as follows:

" In the foreclosure of a mortgage on a railroad situated " partly in *two* States, a court of one State *cannot* merge in- " to its judgment the lien on the property in the other State, " and, while it may act upon the *person* of the defendant, so " as to compel *it* to make conveyances or releases, yet, *if it* " *has not done so,* its mere judgment is *not a bar* to suit in " the other State, between the *same* parties, to foreclose the " same mortgage there." (Head note, 2.)

And, in the opinion of the court, this language was used:

" In Watkins v. Holman, 16 Peters, 25, it was held, that a

" court of chancery might decree a conveyance of land in any " other State, and might enforce the decree by process against " the defendant, but that *neither the decree itself, nor any " conveyance under it, except by the person in whom the title " is vested, could operate beyond the jurisdiction of the " court,*" (adding): "Indeed, no principle is more firmly set- " tled than that the disposition of real estate, whether by " deed, descent, or any other mode, must be governed by the " laws of the State where the land is situated."

And to the foregoing proposition, *supra*, the court cites:

Farmers L. & T. Co. v. Postal Tel. Co., 55 Conn., 334, 11 Atl. Rep. 184; and

Muller v. Dows, 94 U. S. 444.

And apropos of the latter, the court proceeds as follows:

" It is *argued* that, in respect of *immovable* property, mort- " gaged by an *interstate* railroad company, a *different* rule " has been established by the case of *Muller v. Dows*, 94 U. S. " 444. It is contended that the court there held, that as the " railroad and its franchises were an entirety, any court *hav- " ing jurisdiction of the parties and subject matter*, could " make a valid decree of foreclosure, which would operate on " the entire railroad property, as well without as within the " State where the decree was pronounced, and that it would " completely merge the lien of the mortgage.

" What was *there* said, giving *apparent* support to this " contention, was merely *'arguendo,'* and was *not essential* " to the judgment pronounced.

" In that case, the Circuit Court of the United States for " the District of Iowa, passed a decree of foreclosure and " sale of a railroad extending from a point in Iowa to a " point in Missouri, and owned by a corporation formed by " the *consolidation* of a corporation of Missouri with a cor- " poration of Iowa. The entire line was covered by one " trust deed, and the suit to foreclose was brought by the " Trustees. The mortgagors were also before the court, and " the sale was made by the Master at the instance of the " Trustee. It was held that the decree was not void, *so far* " as it directed the foreclosure and sale of that *part* of the " railroad lying in *Missouri*, and that the Trustee could be " required by the court in Iowa to make a deed to the pur- " chaser *in confirmation* of the sale.

" In my judgment, this case does not overturn the well-es- " tablished doctrine, that a court in *one* State *cannot pass a " decree which shall operate to change the title to, or merge a " lien upon, immovable property in another State.* The title

" in *that* case was transferred by the court compelling the " execution of *a power of sale*, and *not* by force of the *decree;*

Mercantile T. Co. v. Kanawha & O. Ry. Co., 39 Fed. 337;

Farmers L. & T. Co. v. Postal Tel. Co., 55 Conn., 334, 11 Atl. Rep. 184."

After quoting the latter case and commenting *in extenso*, the court concludes:

" In my judgment, the doctrine of *this* case presents the " *better* view, and it must be held that the *decree* of the Ohio " court did *not* merge the lien of the mortgage on the real es- " tate in Indiana."

In Pittsburg & State Line Ry. Co. v. Rothschild, 26 Amer. & Eng. Railway Cases, p. 50, (Advanced Case, Penn. 1886,) it is held as follows:

" It is clear that the decree of sale, and the deed made in " pursuance of it (in *New York,*) *are ineffective to pass title* " *of the property in Pennsylvania.* * * *.

" Though a person *having the legal title* to land in one " State, may be decreed by a court of equity in another State " to convey the land, yet, *neither* the *decree* nor any con- " veyance by virtue of *it* by one *not having the title* can ope- " rate *beyond* the jurisdiction of the court.

Watkins v. Holman, 16 Peters, 25.

" A court of chancery, having jurisdiction over the *per-* " *son who has the legal title* to lands in another State, may, " by a decree, force *him* to convey to the holder of the equit- " able title for whom he stands as trustee; *but it cannot, by* " *its decree, or through a deed of a commissioner, pass that* " *title.*"

Watts v. Waddle, 6 Peters, 389.

And the court sums up its conclusion in these strong words:

" That the proceedings had in the Supreme Court of Mon- " roe County, New York, for the foreclosure of the mortgage, " were *local* in their character and can have *no extra-terri-* " *torial effect:* (H. N. 3);

" That the decree of sale and deed made, in pursuance of " it, *are ineffective to pass title* of the corporate property in

" Pennsylvania to Adrian Iselin, the purchaser, *or his ven-*
" *dee," etc.;* (H. N. 4);
" That the decree foreclosing the equity of redemption of
" the mortgagor had *only* the effect of foreclosing its equity
" of redemption in the mortgaged premises in the State of
" New York." (H. N. 5.)

And in concluding its opinion in this case, the court declares:

" *These* principles are *not in conflict* with the principles
" decided in *Muller v. Dows,* (94 U. S. 444.)"

John D. Works, the author of "Courts and Their Jurisdiction," after an interesting review of the principles and precedents bearing upon this question, summed up in the following words:

" *But,* whether the court can go further and enforce a con-
" veyance is still more doubtful. To allow such a power is
" to concede to the courts of one State the jurisdiction to
" render a decree, and enforce a conveyance which would
" pass title to real estate outside of its territorial jurisdic-
" tion. And yet, *some* of the cases go to that extent."
Muller v. Dows, 94 U. S. 449;
Seixas v. King, 39 La. Ann. 510; 2 So. Rep. 416.

And in the note to the text, at pages 54-5, these remarks are volunteered, by way of distinguishing the said Muller v. Dows case, *supra,* which are in line with those preceding:

" The case of *Muller v. Dows,* was an action to foreclose a
" mortgage given by a railroad company upon its line of
" railroad, a *part* of which was within the State over which
" the court had jurisdiction, but a *part* of the line extended
" into *another* State. The mortgage covered the entire line.
" It was held that the court had jurisdiction to foreclose the
" mortgage as to the entire line, and to order the sale of the
" property as an entirety. *But,* in passing upon this ques-
" tion, the court said: 'Without reference to the English
" Chancery decisions, where this objection to the decree
" would be quite untenable, we think the power of courts of
" chancery in this country is sufficient to authorize such a
" decree as was here made. It is here undoubtedly a recog-

" nized doctrine that a court of equity sitting in a State, and " having jurisdiction of the *person*, may decree a conveyance " by *him* of land in another State, and may enforce the de- " cree by process against the defendant. True, it *cannot* send " its process into that other State, nor can it deliver pos- " session of land in another jurisdiction, but it can command " and enforce a transfer of the title. And there seems to be " no reason why it cannot, in a *proper* case, effect the trans- " fer by the agency of the Trustees when they are complain- " ants'."

And these comments follow:

" With respect to so much of this opinion as relates to the " matter of enforcing contracts to convey, it must be regard- " ed as the *'reasoning'* of the court rather than an *authorita- " tive decision*, as *no such question was before the court.* " The case of Seixas v. King is directly in point, and is based " upon the case of *Muller v. Dows.*"

After pointing out that the Supreme Court of Ohio has taken a different view of the matter, citing and quoting "Burnley v. Stevenson, 24 Ohio St. 474, 478, 15 Am. Rep. 521, the author concludes as follows:

" *It does not follow*, however, that a court having power to " compel the parties before it to convey lands situated in an- " other State, *may make its own decree to operate as such " conveyance.* Indeed, it is well settled that the *decree* of " such court *cannot* operate to transfer title to land situate " in a foreign jurisdiction. * * * And if a *decree* in such " case cannot effect the transfer of title to such lands, *it is " clear that a deed executed by a Master, under the direction " of the court, can have no greater effect.*"

Watts v. Waddle, 6 Peters, 389:
Page v. McKee, 3 W. P. D. Bush, 135."

That the principle laid down in *Muller v. Dows*, is not inharmonious to all the other adjudications by this court, and by those in the other courts quoted, *supra*, and is really *for* us and not *against* us, according to the views of the editor of the "Digest of the United States Supreme Court Reports," Vol. 2, p. 1365, anent the subject of "Real Property—Transfer by Courts," we subjoin an extract therefrom, to the following effect:

" A court *cannot*, by the mere force of its *decree*, transfer " the title to land lying without its jurisdiction from the " party in which it was vested. It may decree a conveyance " and enforce its execution by process against the party; " but neither its *decree* nor any conveyance under it, *ex-* " *cept by the party in whom the title is vested*, is of any effi- " cacy beyond the jurisdiction of the court, (citing):

Corbett v. Nutt, 10 Wall. 464, 19;; 976;
Watts v. Waddle, 6 Pet. 369, 8; 437;
Watkins v. Holman, 16 Pet. 25, 10; 873; and including *Muller v. Dows*, 94 U. S. 444, 24; 207.

In Watts v. Waddle, *supra*, 1 McLean, 200, it is held as follows:

" The decree of title in one State to lands in another *can-* " *not operate to vest the legal title.*
" The statute which gives effect to a deed executed with- " out the State, if made in pursuance of the law of the coun- " try, refers to deeds of *the party.*
" A decree in Kentucky for the conveyance of land in " Ohio, *though executed by a Commissioner*, under the stat- " ute in pursuance of the decree, *can give no title*," (adding): " These defects in the deed tendered are so *radical*, as to " render it as a legal conveyance, *inoperative.* And on *this* " ground, the bill of the complainants must *be dismissed* " *with costs.*"

In Mercantile Trust Co. v. Kanawha & O. Ry. Co., 39 Fed. 339, the court, speaking through Mr. Justice Harlan, said:

" " It was assumed by counsel that a determination of this " question adversely to the plaintiff would be a repudiation " of the decision in Muller v. Dows, 94 U. S. 444.
" *But such is not the fact.*

And the opinion goes on to differentiate the salient features characterizing each case, which ground need not be here repeated, as this case is cited and quoted further on in this brief to our proposition "VI."

The Supreme Court of Georgia, in 94 Ga. 307, in an opinion reviewing the decree of the lower court upon the fore-

closure and sale of the property of the Georgia Southern & Florida Railroad, took occasion to discuss *Muller v. Dows*, holding that upon authority of it, "the Superior Court of *mortgagor's* residence may decree foreclosure sale of a railroad continuing into another State, directing *receiver, mortgagee, and mortgagor* to execute deed to whole property." *But*, it was at pains to stress, as the condition precedent, the recognized importance of strict observance of the conditions there detailed.

Some Home Examples from the Circuit Court of Appeals for the Fifth Circuit, and from the Circuit Court for Northern District of Georgia, as Pertinent Precedents for Respondents' Contention.

When the learned Circuit Judge (Pardee,) in the course of his dissenting opinion, concluded by announcing, "There are some *other questions* raised in the assignments of error the proper determination of which might require the *reversal* of the decree below, and a remand for further proceedings," etc., (Rec. p. 564, 127 Fed. 508,) he must have had in mind, among other assignments set out, our "Eleventh" and "Fifteenth" Assignments, (Rec. pp. 545-6,) in particular, and must have been weighing them in the light of the adjudication in his own court *in re* "Guarantee Trust & Safe Deposit Co. v. Delta & Pine Land Co. *et al.*, 104 Fed. 5, (decided May 30, 1900.) As such a *reversal* of the Circuit Court, upon the independent grounds so assigned, would be but consistently maintaining that uniformity of decisions both of this court and his own, for which counsel of Petitioner claims to be concerned, we may be pardoned for closing this branch of our argument by subjoining certain pertinent extracts from this opinion of the Circuit Court of Appeals for Fifth Circuit, which was unanimous, and in the strongest terms sustains the contention of Respondents:

Without quoting the text of the opinion covering an exhaustive review of many of the authorities cited and quoted hereinabove, we extract the following:

" And it may be said that 'a sale made by a *special master*,
" under the direction of a court of chancery, *is not* a sale
" made by either of the *parties* to the litigation or under his
" direction. The master is a representative of the *court*, as

" a marshal or sheriff is in an action at law. He is not
" under the control of either party. He is not the agent of
" either to make the sales. (Mining Co. v. Mason, 145 U. S.
" 361, 362.) It will thus be seen that the decree in Black-
" burn v. Railroad Co. (C. C.), 3 Fed. 689,) did not operate
" directly upon the trustees or the railroad company, by re-
" quiring conveyances to be made by *them*, but partaking of
" the nature of a proceeding *in rem*, it acted immediately
" upon the *property*, and was to be executed through the in-
" strumentality of independent officers appointed by the
" court. A writ of assistance, issued by the court in Ten-
" nessee to put the purchaser at the sale made by the mas-
" ter in possession of the property, *would be wholly inope-*
" *rative, because such process could have no extra-territorial*
" *effect.*" (Citing):

Toland v. Sprague, 12 Pet. 300; 9 L. ed. 1093;
Picquet v. Swan, 5 Mason, 40 Fed. Cas. No. 11,134;
Ex parte Graham, 3 Wash. C. C. 456; Fed. Cas. 5,667;
and other cases cited."

" Notwithstanding the want of power in a court of one
" State to deliver by its process the possession of land in an-
" other, it is nevertheless a recognized and accepted doc-
" trine that a court of equity, sitting in a State and having
" jurisdiction of the *person*, may decree a conveyance *by*
" *him* of land in another State, and may enforce the decree
" by process against the defendant."

Muller v. Dows, 94 U. S. 449, 24 L. ed. 207;
Massie v. Watts, 6 Cranch, 148, 3 L. ed. 181, etc.

" Where, however, it is sought by the *decree* to effect a
" transfer of the title to land lying within another jurisdic-
" tion, by directing its sale by a *Master*, who is *not* clothed
" with the title, the decree in such case operates upon the
" *thing*, and does *not* divest the title of the *Owner;* the
" master being, as we have seen, a mere representative of the
" court, not under the control of either party, nor the agent
" of either to make the sale. In the case last mentioned, the
" deed is simply *inoperative* to pass the title; for, to judici-
" ally divest the title to real estate out of one person and
" place it in another, *the holder of the title* must be before
" the court, and the decree must operate upon the *person* by
" requiring *him* to make the conveyance. This principle is
" *elementary*, and should have special application to decrees
" rendered by the courts of one State authorizing the trans-

" fer of title to lands lying within the limits of another " State." (104 Fed. p. 10.)

" *But,* it is claimed by counsel for the appellant, that *Muller v. Dows,* 94 U. S. 444, 24 L. ed. 207, has overruled or modified the earlier cases decided by the Supreme Court.
" *..In this view we are unable to concur.*
" The suit in that case was brought by the trustees named " in the mortgage. The Chicago & Southwestern Railway " Company was one of the defendants. A *part* of its rail- " road was in Missouri, and the mortgage which the bill " sought to have foreclosed covered that part as well as the " entire property covered by the mortgage, and directed the " *Master,* who was ordered to make the sale, to execute a " deed to the purchaser. *The Mortgagor was also directed* " *to make a conveyance to the purchaser in further assur-* " *ance.*
" Upon appeal the decree was affirmed.
" It will be observed, that the railway extending into *two* " States, was sold in its entirety; that the trustees were com- " plainants in the suit seeking a sale of the property; and " that the *Mortgagor* was required also to execute a deed " to the purchaser. The court seemed to lay stress upon the " fact that the sale was made *at the instance of the trustees,* " who notwithstanding the appeal, could also be directed by " the trial court to *join in* a conveyance.
" In discussing the question, the court (at p. 450, 94 U. S. " and p. 209, 24 L. ed.), observed:
" 'The *Mortgagors* here were within the jurisdiction of the " court. So were the Trustees of the mortgage. It was at " the instance of the latter, the master was ordered to make " the sale. The court might have ordered the trustees to make " it. The *Mortgagors,* who were foreclosed, were enjoined " against claiming property after the master's sale, *and di-* " *rected to make a deed in further assurance,* and the court " can direct the trustees to make a deed to the purchaser *in* " *confirmation* of the sale. We cannot, therefore, declare " void the decree which was made."

Thus, the Circuit Court of Appeals for the Fifth Circuit, after its exhaustive review of the uniform adjudications of this court to the proposition (IV) advanced *supra* by Respondents, distinctly and unanimously *declined to concur in* the contention of counsel in that case—and as urged by counsel in this case — to the effect that the said *Muller v. Dows* case has "overruled or modified the earlier cases decided by the Supreme Court," but expressly held to the *contrary.*

And the former adjudication of the said Circuit Court of Appeals for the Fifth Circuit, in the case of "International Bridge, etc. Co. v. Holland Trust Co., 52 U. S. App. 240-3," (decided May 18, 1897,) wherein, upon the authority of Muller v. Dows, 94 U. S. 444, the sale of an interstate bridge was upheld by Pardee and McCormick, Circuit Judges, and Newman, District Judge, is merely in harmony with the said contention urged by Respondents. This, for the reason among others, that said adjudication was pursuant to a decree *in personam*, and not *in rem*, and all the parties at interest, including the owner and mortgagor, were before the court, "and the *bridge company, its officers and directors*, were ordered, after the sale of the property and the confirmation of the sale, to make good and sufficient conveyances * * * and failing to do so, * * * they would be held to be in contempt of court, and would be punished accordingly."

Respecting the matter of "home precedents," or examples, it is noteworthy that, in the framing of the "form and terms" of the divers decrees of sale and of (conditional) confirmations, as entered by the Circuit Court in the case at bar, the *latter* appear to present the *only exception* or departure from the general rules established under the many and important adjudications heretofore had in the said court, both those preceding and those subsequent thereto.

In all railroad foreclosures recently had in the jurisdiction of the Circuit Court of the United States for the *Northern District of Georgia, ancillary* bills were filed in *every State* through which the road ran; decrees were taken on each of these ancillary bills, and *the mortgagor railroad companies were required to execute deeds*, as well as the Master Commissioner, and the purchaser was given the right to demand a deed from the *trustee* foreclosing the mortgage.

This was true in the Central Railroad foreclosure, Richmand and Danville foreclosure, Georgia Pacific foreclosure, Savannah and Western foreclosure, Marietta and North Georgia foreclosure, and Chattanooga, Rome and Columbus foreclosure, and notably in the case of the Eagle and Phenix Manufacturing Company foreclosure.

The course pursued in respect of the foreclosure and sale of the property of the said Eagle and Phenix Manufacturing Company, one of those subsequent in date to that of the case at bar (in 1898-9,) affords a particularly striking home example of the "forms and terms" that were *not* observed in

the case at bar. The Eagle and Phenix Mills represented a two million dollar cotton mill plant situate just twenty miles south of the plant in controversy, on the Chattahoochee river, the bulk of its property, consisting of mills, machinery, etc., being on the *East* or *Georgia* side of the river, while a smaller portion, such as the operative houses, and other realty and a small yarn mill, (all of far less intrinsic value) are on the west or Alabama side, in Girard, Ala. Furthermore, the said Eagle and Phenix Manufacturing Company was chartered only under the laws of *Georgia,* and it was the *only* party defendant in foreclosure.

And yet, in order to reach and subject the said *Georgia* Company's lands and property in Alabama, and to effectuate a valid sale and conveyance thereof, each and every form and ceremony hereinabove outlined were duly observed not only by the said Judge of the Georgia Circuit Court (Newman, J.), in *his* jurisdiction, but likewise duplicated under the ancillary or auxiliary suit in the Middle District of Alabama, concurrently prosecuted therein, each of said courts independently entering its respective decrees, and *requiring* as conditions precedent to delivery of deed and *before* surrender by the Receivers, *first,* evidence of completed payment of the entire amount bid, and immediately on confirmation, that *then, the defendant corporation owner and mortgagor, and Trustee,* should "execute and deliver, *under the direction of* the Master Commissioner, conveyances by way of confirmation, and further assurance of title," etc. (Book of Minutes, U. S. Cir. Ct., Mid. Dist. Ala., Vol. 12, pp. 274, 277, 260-292.)

V.

REPLY TO THE DISSENTING OPINION OF JUDGE PARDEE, IN THE CASE AT BAR.

It is with great respect we discuss the dissenting opinion of the learned judge of the Circuit Court of Appeals, and endeavor to show that it is based upon erroneous principles, or at most supported rather by the *argumentum ad hominem,* than by sound logic.

His views, that if Respondents' contention is correct that there are *two* distinct corporate entities under the name of "The Alabama and Georgia Manufacturing Company," then they are 'twins,' assimilated to the celebrated Siamese Twins, who were bound together by a common ligament so that

where one went the other was bound to go,—is more imaginative than real.

Notwithstanding the vast resources of Nature, she was enabled to accomplish such a result only by a *freak;* a complete departure from the normal type, and no power but Nature, herself, could have wrought such a work.

In respect of the so-called "Corporate Twins," the authorities we have cited clearly show that the learned dissenting judge is in error in supposing that unity of corporators, stockholders, officers, property and business (even if those conditions actually obtained,) furnished a ligament that binds these two corporations together so that whatever one did, the other did, and wherever one went the other went.

These authorities make it quite clear that notwithstanding such unity there are *two separate* corporations, citizens of different States, and that it was beyond the power of the two corporations by anything they might jointly do, and beyond the power of the two States, to convert the two corporate beings into one complete, independent legal entity.

St. Louis & San Francisco Ry. Co. v. James, 161 U. S. 545;

Kahl v. Memphis & Charleston R. R. Co., 95 Ala. 337;

Meyer v. Johnston & Stewart, 64 Ala. 603, 669;

Carter on "Jurisdiction of Federal Courts," pp. 79, 80, 81, 82, 83, 84, 85;

Also, Majority Opinion of the Circuit Court of Appeals, (Rec. pp. 551, 559-560, 127 Fed. 504-5.)

Therefore, when one of these bodies, the *Georgia* corporation, was brought into the Federal Court for the Northern District of Georgia, it went there in its separate being and capacity as a *Georgia* corporation, and the so-called ligament being absent, it did not carry with it, its Alabama namesake. Indeed, it was not a place where the Alabama 'twin' could go or be carried, as its presence there would have ousted the jurisdiction of that court over the entire cause.

It is a clear misnomer, however, and at most, judicial humor, for the learned judge to characterize these two corporate bodies as 'twins,' either of the Siamese order, or other kind, as in the very nature of things, twins can only exist where there is one common mother, and coincidence of birth.

Each of these two corporations had its own mother in a separate sovereign State, and nearly two months intervened between the birth of the original Alabama Company and the later Georgia Company.

Again, the dissenting judge says:

" If the Alabama and Georgia Manufacturing Company, " chartered in Alabama, and The Huguley Manufacturing " Company, chartered in Alabama, are separate entities " from the corporations chartered in Georgia, then they " should be held to be joint tenants, privies in estate, and " both fully bound by the proceedings had in the foreclosure " suit."

To what extent, under the general law, one joint tenant may be held bound by a judgment against his co-tenant, in a suit to which he is not, himself, a party, it is not necessary to discuss, but we respectfully insist that if such be the rule (which we do not concede,) there are many limitations upon it, and this case presents one of them.

It is to be remembered that if these two corporations were in any sense joint tenants, then one of these joint tenants was sued in a forum where the other joint tenant had no *locus standi*—where it had no power to go, and the court no power to admit it, to protect its interest in the subject of the litigation. It would indeed be an unreasonable and harsh rule which would bind the tenant, not sued, in a case like that.

It was for this very reason, viz, that the Alabama corporation neither had, nor could have, any standing in the Federal Court in Georgia, that it was compelled to resort, and did resort, to the Alabama State Chancery Court—the '*proper*' court, as declared by the Court of Appeals—(Rec. p. 556, Op. C. C. A.), where its rights and interest could be protected and enforced; and the action of the Federal Court in Georgia, in issuing the injunction, is equivalent to that court saying to the Alabama corporation, you *cannot* come into this court to assert or protect your rights, and you *shall not* go into the Alabama Court, the only court where you can be heard, but without any hearing anywhere you shall be bound by the decree here. That is, bound by its decree, notwithstanding one of the indispensable elements of jurisdiction is the *right to be present before the court and to be heard.*

In Cecil v. Cecil, 19 Md. 73, it is held that "parties, in the larger sense, are all persons having a right to control the proceedings. to make defense, to adduce and cross-examine witnesses, and to appeal from the decision, if an appeal lies; only those therefore who have enjoyed all these privileges, collectively, should be concluded by a decision, judgment or decree."

It must be borne in mind, that the bill in the Robinson case in the Federal Court of Georgia, sought a foreclosure of the mortgage on all the property, not only that in Georgia, *if any*, but also that in Alabama; that the title to the entire property in Alabama (as well as that described in the mortgage as lying in Georgia—the islands), was originally in the *Alabama* corporation of The Alabama and Georgia Manufacturing Company, and it was the mortgage as to that property (if there was ever any mortgage binding that property), which was sought to be foreclosed. That this title was not derived through, by, or under the Georgia Company, but was original, independent and complete, and that the *Alabama* corporation was an indispensable party to any proceeding which sought to divest that title.

Under these circumstances, even if it should be conceded that its attorneys defended the Georgia suit in the Federal Court, in the name of the Georgia Company, that fact alone would not make a decree in the Federal Court binding on the *Alabama* Company.

In VanVleet's Former Adjudication, p. 1015., it is said:

"That if one has a right which is direct and substantive, and not derivative, so that he is a necessary party defendant, he will not be bound by the judgment, if not a party, notwithstanding the fact that he assumes the defense."

In Central Baptist Church v. Gideon Manchester, 17, R. I. 492, after quoting from Wells on Res Adjudicata, and Black on Judgments, it was held:

" It is evident from these authorities that it is not suffi-
" cient to conclude a party by a judgment in a former suit
" against his servant, agent, or employee, to which he was
" not a party of record, that he employed an attorney who
" was present for him and participated in the trial, since to
" bind one, not a party of record, by a former judgment, it
" is essential that he should have openly intervened in the
" former suit, assuming its direction and control, to the
" knowledge of the opposite party for the prosecution or de-
" fense of some interest in the subject of the suit, or to avert,
" a liability he may be under to indemnify the defendant
" against an adverse judgment."

To the same point:

Black on Judgments, § 540;
Shroeder v. Lahrman, 26 Minn. 87;
Cannon River Mfg. Assn. v. Rogers, 42 Minn. 123.

In the 26 Minn. *supra,* speaking of such an estoppel claimed as to one who employed an attorney by whom the suit was defended in the name of the actual defendant, it is said:

"That he employed the attorney who appeared for the defendants and appeared as a witness for defendant, is not sufficient," (and further): "The part taken by this defendant in the former suit was not such that she could be bound by or entitled to the benefit of the judgment."

The conclusion reached by these authorities must necessarily be sound when we consider the important principle relating to estoppels, that they must be *mutual.*

Let it be supposed that Robinson, the trustee, failed in his foreclosure suit filed in the Federal Court in Georgia, against the Georgia corporations, and afterwards brought suit in Alabama against the Alabama corporations, for the foreclosure of the mortgage, could it for one moment be successfully contended that the decree against him in the Federal Court in Georgia operated as a bar or estoppel against him to the bringing of the second suit in Alabama against the two Alabama corporations, by reason of the fact that the two Alabama corporations (*if* it were a fact), had employed counsel to defend the Georgia suit in the name of the Georgia companies, and their officers or agents had appeared as witnesses in that cause? Such a contention would scarcely be entitled to respectful consideration from any court and certainly could not receive its sanction. And yet, unless such an effect could be accorded ,as against Robinson, to an unfavorable decree against him in the Georgia court it is difficult to see how, without an entire disregard of the principle of mutuality of estoppels, the decree which was actually rendered in his favor can now be successfully claimed or maintained as an estoppel against the Alabama corporation in the Alabama suit.

Or, on the other hand, let it be supposed that Robinson, the trustee, should now file a bill in Alabama against the *Alabama* Company, to foreclose the mortgage as to the Alabama property, would it be heard to set up that *it* was a party by representation or privity to the decree in the Georgia foreclosure proceedings, and that such proceedings therefore constitute a bar or estoppel to the maintenance of such a bill in an Alabama court? The statement of the question carries its own answer.

Lynde v. Columbus, C. & I. R. Co., 57 Fed. 993;
Muller v. Dows, 94 U. S. 444;

Farmers L. & T. Co. v. Postal Tel. Co., 55 Conn. 334;
Ib. 11 Atl. Rep. 184;
Russell v. Place, 94 U. S. 606.

What has been said of the binding effect of the decree of the Federal Court of Georgia upon The Alabama and Georgia Manufacturing Company of *Alabama,* is equally applicable to the two corporations under the name of "The Huguley Manufacturing Company."

The intimation of the learned dissenting judge of the Circuit Court of Appeals, that the Alabama Huguley Company had falsely admitted its citizenship for the purpose of conferring jurisdiction and thereafter losing its suit has repudiated the same, is predicated upon the assumption that the company was never incorporated in Georgia.

A copy of the last mentioned charter is not in the record. But the fact of the incorporation of a company in that name in Georgia, is charged in the original bill filed by Robinson, Trustee, against it in the Circuit Court for the Northern District of Georgia, (Rec. p. 1,) and is admitted in the answer to said bill (Rec. p. 14,) and in the joint and separate answer, demurrer, etc., as filed by the Petitioner and others to the later bill in Alabama (Rec. p. 511,) and likewise in the petition for *certiorari,* (clause *First,* p. 2.)

As to the *Alabama* corporation of The Huguley Manufacturing Company, at pages 531-5 of the Record, will be found the full proceedings for incorporation in Alabama, and the organization and undertakings thereunder — all, be it noted, under orders issued by the said J. J. Robinson, in his other capacity, as Judge of Probate of Chambers County, Alabama.

Inasmuch as the said assumption of the learned judge that the Huguley Company was not incorporated in Georgia is overborne by the record, and the Alabama Huguley Company was under all the limitations in respect of a standing in the Federal Court of Georgia, and was equally with The Alabama and Georgia Manufacturing Company of Alabama, precluded from a hearing in that court, and the Georgia Company alone could defend in that court, the intimation of the learned judge falls to the ground.

From the appellation "persistent defendants," applied by the dissenting judge to The Huguley Manufacturing Company, and his intimation *supra,* it is quite manifest that there are features of the case which have either entirely es-

caped his observation or failed to carry with him the weight to which they are entitled.

In the first place, there can never be a "persistent defendant" without a persistent *plaintiff*.

If any single fact more than another stands out conspicuously, and pre-eminently on the face of this record, it is the palpable fact that L. Lanier—the arch instigator and promoter of both the original suit in the Troup County, Georgia, court, and of the later suit in the Federal Court in Georgia—has, undoubtedly, filled the other and opposite role, to-wit, that of a consistently relentless and *persistent plaintiff*. That this cannot be gainsaid, a glance over this record and the salient features compassed under our preliminary statement of facts in this brief, at pages 1-8, will readily impress the fact upon this court—*and more!*

Because of its signal importance as a proposition, we believe, both pivotal and determinative in itself against Petitioner, we will not dwell here on this phase, but postpone to another independent head ("VII") further expose and discussion of certain vital facts, the knowledge of which has been brought home, throughout, to the said Lanier, and through Lanier, to his privies, from the consequences of which they cannot escape.

And, incidentally, we shall demonstrate that the dissenting judge did not err in charging at the door of the said Lanier and his privies, primarily and affirmatively, the plain responsibility for the "*false allegations,*" (*i. e.*, as to citizenship of defendants sued); while we shall make equally clear to this court that his charge of "fraudulent admissions" on the part of the solicitors for defendants, was undeserved. The testimony of Mr. Hammond, attorney for the defendant companies, given in the Robinson suit, shows that he had himself obtained the Georgia charter of The Huguley Manufacturing Company, and that he claimed to represent only the Georgia corporations. (Rec. p. 26.)

Robinson Was On Notice of the Rights of The Alabama Corporations.

Robinson, Trustee, and complainant in the suit in the Federal Court in Georgia, in his several capacities of (a) a citizen of Alabama; (b) of Judge of Probate of Chambers County, Alabama; and, (c) otherwise, as more fully explained in our preliminary statement of facts in this brief, was on both actual and constructive notice, first, that the said The

Alabama and Georgia Manufacturing Company was chartered and organized under the laws of Alabama (Acts of Alabama, General Assembly, Feb. 7, 1866; Rec. pp. 494-5, 551-2); and, second, that The Huguley Manufacturing Company was duly chartered and also regularly organized under the laws of Alabama. His certificate to that fact, as Judge of Probate, appears in the record, under date of Feb. 28, 1890, (Rec. pp. 531-5). And, furthermore:

It was Robinson, the Trustee in the mortgage, who with full knowledge of the two corporate entities, and that the bulk, if not all, (certainly all of any value,) of the corporate property was located in Alabama, and that the title to the whole property was in the *Alabama* corporation of The Alabama and Georgia Manufacturing Company, with [redacted] in W. H. Huguley & Company, or The Huguley Manufacturing Company, and who was, himself, residing in Alabama, in the same county, Judge of the Probate Court in that county, and who was necessarily familiar with the location of the factory in Alabama, and the history of its construction and operation by the Alabama companies, the charter of one of which he himself had issued,—yet later, in 1891, elected to go into Georgia to file the foreclosure bill, not in a State Court where all the parties in interest could come, but in the foreign Federal Court, where he knew only the *Georgia* corporations *could* come, and where he knew the two *Alabama* corporations could neither come of their own motion nor be admitted or required to come by the court.

He, himself (and Lanier), created the very conditions that restricted the defense of the suit in the Federal Court in Georgia to the Georgia corporation, and made necessary the resort by the *Alabama* corporation to the Alabama Court. Under these circumstances, it does not lie in the mouth of either Robinson, or the Petitioner in this proceeding, which claims through the said Robinson and Lanier, to complain of these Respondents for doing only what Robinson's and Lanier's own acts made it necessary for them to do. (See argument further on under Proposition "VII," and the authorities quoted thereunder.)

It would seem, in the light of these facts, that the criticism of the estimable dissenting judge might better have been reserved in toto for the *Petitioner and its privies* than directed, as they are, (in part), against these Respondents.

Recurring again briefly, to the analogy of joint-tenants, suggested by the dissenting judge as indicating the relation existing between the two corporations under the name of The Alabama and Georgia Manufacturing Company, it may be remarked that both in Georgia and in Alabama joint tenancies have long since been abolished and in the place of such relation there exists tenancy-in-common; and it is well settled that one tenant-in-common is *not* bound by a judgment against his co-tenant to which he was not a party, although he was in possession with his co-tenant at the time of the suit.

Miller v. Blackett, 47 Fed. 547;
VanVleet's Former Adjudication, p. 1191, § 587.

The illustration, however, is by no means felicitous even if it be apt. In Cameron v. McRoberts, 3 Wheat. 591, McRoberts filed his bill in equity against Cameron, Jackson and Emerson; the bill alleged that complainant was a citizen of Kentucky, and Cameron was alleged to be a citizen of Virginia; there was no designation of citizenship as to the other two defendants. All the defendants appeared and a final decree was rendered for complainant. Afterwards, the defendant, Jackson, moved the court to set aside the decree and dismiss the suit for want of jurisdiction, upon the allegation that all the defendants, including Jackson, were citizens of Kentucky.

This court, in reply to questions certified for its decision, among other things, held:

" If a joint interest vested in Cameron and the other de-
" fendants, the court had no jurisdiction over the cause. If
" a distinct interest vested in Cameron so that substantial
" justice (so far as he was interested) could be done without
" affecting the other defendants, the jurisdiction of the court
" might be exercised as to him alone."

From what has been said, it is quite apparent that the dissenting judge is mistaken in treating the two corporations as twins; mistaken in his view that wherever one may go, the other may or must go, and mistaken in saying that whatever one does the other does; for having been incorporated under the laws of different States, each is limited and controlled in its power to act by the laws of its respective State, and that there is a radical and conspicuous difference between these laws in respect of the rights and powers of the two corporations to act, in at least one respect is manifest from the two charters; one of which authorizes the *Alabama* corporation to establish its plant in Alabama, on the

west side of the Chattahoochee river, and the other, the Georgia charter, authorized the Georgia corporation to establish its plant on the *east*, or *Georgia*, side of the river, and prohibits it from erecting buildings or disturbing vested rights of the Alabama corporation, which had been acquired by the latter under its Alabama charter previous to the grant of the Georgia charter to the Georgia company.

It is entirely clear from the facts as shown by the record, and the law as applied to those facts in the authorities we cite, that there were two separate and distinct corporations under the name of The Alabama and Georgia Manufacturing Company, one created by and having its habitat in the State of Alabama; and the other created by and having its habitat in the State of Georgia; that there was not, and could not be, a mystic, undefined corporate nondescript under that name, destitute of legislative parentage, having a floating habitat in either State, at its will, and owning property in both States, which it could dispose of in either State, regardless of the situation of the property. Such a corporate body, we take it, is a legal impossibilty.

If the mortgage was executed by the *Georgia* corporation, and that is the allegation in the Robinson bill, and the insistence of Petitioner, then it could effectively embrace only such property as the *Georgia* corporation owned. And all the property owned by the Georgia corporation which could be affected by the mortgage consisted of its franchises and the riparian rights granted to it by the Legislature of Georgia. When sued it had a right to defend the foreclosure for whatever right it had or thought it might have.

By the express terms of its charter that corporation was authorized, only, to erect its buildings on the *east*, or *Georgia*, side of the Chattahoochee river, and by implication was prohibited from constructing any buildings or plants on the west, or Alabama, side.

The express limitation of the Georgia Company, by its charter, to the ownership of buildings and plants on the *east*, or Georgia, side involves in itself a negative and the negative is that it shall not construct buildings or a plant on the west or Alabama side; and in addition to this implied negative there is an express inhibition upon its disturbing or interfering with the vested rights of any person on the *west*, or *Alabama*, side of said river, or even the *islands* therein. (Rec. pp. 530, 553.)

Furthermore, the record shows that the *title* to the Alabama property (and, as we insist, also that described in the mortgage as being in Georgia,) was originally, and still is,

vested in the said *Alabama* corporation of The Alabama and Georgia Manufacturing Company. (Rec. pp. 486-7, 505, and see Op. C. C. A. p. 536, 127 Fed. 501.)

In this view of the case, the mortgage described in Robinson's bill, and which he foreclosed, undertook to cover property the Georgia corporation was prohibited by its charter from acquiring, and title to which was in another corporation, and the foreclosure could only affect such property, if any, as was located in Georgia, and that might be owned by the Georgia Company.

So, also, if it should be a fact that the Georgia Company lawfully owned and lawfully mortgaged the Alabama property, then, as elsewhere shown in this brief, the United States Circuit Court for the Northern District of Georgia, in which the foreclosure proceedings were had, acquired no jurisdiction of the Alabama property, and its mere decree *in rem*, and its sale by master commissioner, *did not* and *could not*, pass any title to the property in Alabama; that could only have been accomplished in such suit by a decree *in personam*, requiring a conveyance from a party to the suit *having the title*.

On the other hand, if the mortgage Robinson sought to be foreclosed in the Federal Court in Georgia, was executed by the *Alabama* corporation and not by the Georgia corporation, then, it requires no argument to show that the plaintiff Robinson, a citizen of Alabama, could not be allowed, under the false allegations of his bill to continue his suit against a corporation of Alabama, now after that fact is made apparent, where the relief sought is not to carry a final decree into execution, but, under the equities of the original bill, to enlarge the relief granted and cure defects in the former decree.

Assuming that *both* corporations had some kind of joint interest in the property (the record showing only the Alabama Company to have any,) and if *both* corporations severally executed the mortgage (of which there is no allegation or proof in the record,) then, of course, foreclosure in each State as to the property respectively therein would have been necessary.

Graham v. Boston, etc. R. R. Co., 118 U. S. 168;
Lynde v. Columbus, C. & I. Ry. Co., 57 Fed. 993;
Pittsburg & State Line Ry. Co. v. Rothschild, 26 Am. & Eng. Ry. Cases, 50;
Newton v. Eagle & Phoenix Mfg. Co., (explained *supra*.

If either of these views is sound it necessarily results that there has never been any efficacious foreclosure of the mortgage in so far as the Alabama property is concerned, and, therefore, the bill for redemption in the Chancery Court of Alabama was properly filed, and should not have been interfered with by the Federal Court in Georgia, by injunction or otherwise.

VI.

THE BILL FILED IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, CANNOT BE SUPPORTED AS AN ANCILLIARY OR SUPPLEMENTAL BILL, NOR AS AN ORIGINAL BILL.

The only theory upon which the injunction bill in the Federal Court in Georgia, is sought to be maintained, and upon which the decree therein was rendered, is that it is an 'ancillary' or 'supplemental' bill to the Robinson suit, and that it was, therefore, maintainable irrespective of the citizenship of the parties thereto.

There have been many decisions on this question made in the United States Circuit Courts, and several made by this court—notably among the latter are:

French v. Hay, 22 Wallace, 250;
Dietzsch v. Huidekoper, 103 U. S. 494;
Root v. Woolworth, 150 U. S. 401;
Julian v. Central Trust Co., 193 U. S. 93;
Raphael v. Trask, 194 U. S. 272.

In most of the cases on this subject, the right to proceed by ancillary or supplemental bill is limited in so far as parties are concerned to such as were either actual parties to the original cause or concluded or affected thereby as privies or by representation, and wherever that was so, the matter of citizenship had no bearing on the jurisdiction.

French v. Hay, Dietzsch v. Hidekoper, and Root v. Woolworth, come within that class.

In Raphael v. Trask, in which this court held there was no jurisdiction, the bill was sought to be maintained by an independent party.

In the Julian case, independent parties, viz., subsequent creditors, were allowed to be brought in as defendants and enjoined from levying upon and selling property which the Federal Court had previously sold under foreclosure proceedings, but had reserved in its decree the right to retake possession of the property upon failure of the purchaser to comply with the decree of sale, and also the right to adjudicate all liens, claims and equities in respect of the property, preferential or otherwise.

Upon principle, the jurisdiction ought to be confined to cases where the parties to the ancillary bill were either actual parties to the original proceeding or affected thereby either by privity or representation, or where the original proceeding involved a trust fund, in all of which instances the question of diverse citizenship would be immaterial, and that seems to be the view of this court in the last case, Raphael v. Trask, *supra*, where it was held there was *no* jurisdiction of such a bill, where diverse citizenship does not exist, unless there is privity of contract or trust relations between complainants and defendants.

But whatever the conclusion may be as to the right to bring in as a party to such a bill, a defendant who had no sort of connection with the original proceedings and who was not in any way bound by it, it is fully recognized by all the authorities that the ancillary or supplemental bill only lies "to protect the *rights adjudicated* by the court in reference to the subject-matter of the litigation, *and in aid of the jurisdiction of the court*, with a purpose of carrying out its decree and rendering effectual rights to be secured or already adjudicated."

1 Bates on Fed. Eq. Procedure, § 97 (note.)

In the case at bar, there is a failure of jurisdiction, under the ancillary bill, in both aspects.

In the first place, the two Alabama corporations were not parties to the original proceeding, the Robinson suit, either actual or by privity or by representation; they could therefore only be made parties to the ancillary bill by due and legal service upon *them—not* upon the *attorneys*, for, not being parties of record, they could have no attorneys of record, and so far as the record shows, the attorneys of record for the defendants were the attorneys of the *Georgia* companies, and *not* of the Alabama companies, (Rec. pp. 8-9). Furthermore, if the Alabama companies had attorneys of record substituted service upon them, could, as elsewhere

shown in this brief, be made only after proper showing to the court and an order made to that effect. Nothing of that kind occurred in this case.

Pacific Ry. v. Missouri Ry., 1 McCreary, 647.

Again, W. H. Huguley, a citizen of Alabama (Rec. p. 488,) and W. T. Huguley, a citizen of New York (Rec. p. 492,) who were served, were served in the State of Georgia, as *individuals* (Rec. p. 501,) though the companies on whose behalf, it is now claimed, they were served were impersonal citizens of Alabama, and such service, as we have shown in another part of this brief, was not effectual to bind the *Alabama* corporations.

Opinion C. C. A. (Majority,) Rec. p. 557, 127 Fed. 502.

The only appearance of the Alabama Company, after that service, was by way of objection to the jurisdiction of its person, and of the property in Alabama, and it stood on that objection.

Opinion C. C. A. (Majority,) Rec. p. 557, 127 Fed. 502.

But even if this court should go to the extent of holding that it was competent to make the Alabama corporation a party defendant, and that the service on it for that purpose was regular and effectual, there still remains the objection that inasmuch as the Federal Court in Georgia never had jurisdiction in the Robinson suit of the property located in Alabama, and its decree of foreclosure in the Robinson suit was merely a *void* decree *in rem*, attempted to be executed simply by a sale by its master commissioner in Georgia, neither accompanied by deed from the *Alabama* Company, holding title, (nor from the Georgia Company, even,) then it follows that the ancillary, or supplemental bill was not a bill to *protect matters already adjudicated* in the Robinson suit, and as the interest of the Alabama Company never could be adjudicated in that cause and court, the ancillary or supplemental bill could in no sense be called "a bill in aid of the jurisdiction of that court with a purpose of carrying out its decree and rendering effectual rights to be secured or already adjudicated."

No rights of Robinson, the trustee, (and complainant in the original suit,) against the Alabama Company, could have been adjudicated in the original procedure without making the Alabama Company a party, and had that been done the

jurisdiction of the Circuit Court over the entire cause would have been destroyed. It is difficult to imagine how a jurisdiction can be acquired by a mere ancillary or supplemental bill, which was wholly lacking in the original suit, when the ancillary bill, in its very nature, is but the continuation of a jurisdiction already acquired. We could as well conceive of a branch without a vine, or a graft without a stock as of an ancillary jurisdiction without an original jurisdiction.

It follows from the foregoing, that under the foreclosure proceedings, in the mode in which they were conducted, the alleged purchaser, who is the Petitioner here, for the several reasons stated in this brief, not only did not, but could not, acquire any interest whatever in the Alabama property, which was without the jurisdiction of the Georgia court, but none even in the said islands (erroneously) described as being in Georgia.

The Alabama Company, by its Alabama bill, is seeking to enforce its equity of redemption in all the property, averring it to be *all* in Alabama, (Rec. pp. 488, 490-1, 498-9, 505.) The ancillary, or supplemental, bill, seeks to enjoin it from prosecuting its bill as to all the property, and the injunction was so granted and issued.

If it should be a fact that any part of the property is in Georgia, the injunction should, at least, have been confined to restraining the Alabama bill only in so far as it sought redemption as to the Georgia property—(islands only), and even this Respondents do not concede. And it was clearly error to extend the injunction to that part of the bill seeking redemption as to the *Alabama* property—concededly all the factory plant, and village, and all that carries any intrinsic value.

At the same time, we respectfully insist that, even as to the property described in the mortgage as falling within the Georgia jurisdiction, if any, (certain isolated islands, only, of no value,) the foreclosure decree and sale were altogether ineffective to cut off the equity of redemption in the said "The Alabama and Georgia Manufacturing Company of the State of *Alabama*, Chambers County," (owning title to the *whole* property,) or in the Huguley Company, the Federal Court in Georgia having been without jurisdiction of these companies and devoid of all power to acquire such jurisdiction in said foreclosure proceedings.

That the bill in the Circuit Court for the Northern District of Georgia cannot be supported as an ancillary, or sup-

plemental bill, nor as an original bill, as we contend, would seem to be made clear by the following adjudications which we subjoin herewith:

In Mercantile Trust Co. v. Kanawha & Ohio Ry. Co., 39 Fed. 337, (elsewhere referred to in differentiating "Muller v. Dows,") Mr. Justice Harlan, after reviewing the facts, concluded in the following strong words:

" It might be well if Congress would so enlarge and regu-
" late the jurisdiction of the courts of the United States as
" to enable a Circuit Court, in which is brought an original
" suit for the foreclosure of a mortgage resting upon an in-
" terstate railroad, to take actual possession by its officers
" of the entire line, and of all the mortgaged property,
" wherever situated, and administer it for all concerned;
" preserving in that mode the unity of the road, and the just
" rights of mortgagor, mortgagees, and creditors, as well as
" those of the general public interested in commerce among
" the States. *But there has been no such legislation, and we*
" *do not see our way clear to effect any such result by judi-*
" *cial orders merely.*"

And the court held, that a suit filed in said court to foreclose a mortgage upon the lands of the railroad situated in West Virginia, as ancillary to a similar suit filed in the State Court of Ohio as to lands in that State, under the same mortgage, could not be maintained because it was an action against the land in West Virginia, and, therefore, was without the jurisdiction, even by ancillary proceedings, of the Ohio court. It was held that the bill in West Virginia must be filed as an *independent* bill.

The United States Circuit Court, in McWhorter v. Halstead, 24 Fed. 828, held distinctly that ancillary proceedings, coupled with a restraining order preventing the defendants in such proceedings from conducting a separate suit in a State Court, will only lie when the jurisdiction of the State Court has not yet been invoked.

The doctrine that in ancillary proceedings the court cannot interfere, by restraining order, with a distinct and independent suit, either *in rem* or *quasi in rem*, where property is situated in another State, goes so far that the Federal Court, in the case of Schindelholz v. Cullum, 55 Fed. 885, decided in the Eighth Circuit Court of Appeals, that where a court of equity appointed a receiver to take charge of lands

situated in another jurisdiction, it had no power to enjoin a citizen of such jurisdiction from levying an attachment upon such lands unless he was a party to the litigation in which the receiver was appointed.

In Gates v. Bucki, 4 C. C. A. 116, 53 Fed. 961, it was held that where an attachment is levied on realty in a suit in the State Court, and proceedings in equity to cancel an alleged fraudulent conveyance of the attached property are also instituted therein, the United States Circuit Court *cannot* acquire jurisdiction of the land, so as to enable it to enjoin the litigants in the State Court from proceeding therein, at the instance of a party to such equitable suit, who has filed a bill in the Federal Court to foreclose a mortgage on the land in question. Process issuing out of a State Court is a "proceeding" within the meaning of the statute. "Circuit Courts and State Courts act separately and independently of each other, and in their respective spheres of action, the process issued by one is as far out of the reach of the other as if the line of division between them was traced by landmarks and monuments visible to the eye."

Riggs v. Johnson Co., 6 Wall. 195."

" Even if a State Court seeks to enforce a law which is in " direct violation of the Constitution of the United States, a " Federal Court cannot interfere, either directly or by a writ " of injunction against the parties before the court or the " officers of the court acting under color of its authority. " *The remedy is to allow the proceedings in the State " Court to pass to judgment, and, if the highest court of the " State should support the judgment, then to carry the case " up by writ of error to the Supreme Court of the United " States.*"

Live Stock Dealers & Butchers' Ass'n. v. Crescent City Live Stock Landing & Slaughter House Co., Fed. Cases, No. 8408; and see,
Rensselear & S. R. Co. v. Bennington & R. R. Co., 18 Fed. 617;
Yick Wo. v. Crowley, 26 Fed. 207.

In the former case, (No. 8408,) the court held:

" The objection that the Circuit Court of the United " States *cannot* enjoin proceedings in the State Court, is an " objection which cannot be surmounted."

And after saying Congress might enact different legislation, (*i. e.*, from Rev. Stat., § 720,) 'but Congress has not yet assumed that jurisdiction,' the court proceeds:

" Sec. 3 of the act of 1873 declares that no writ of injunc-
" tion shall be granted to stay proceedings in any court of a
" State. This act has never been repealed. The court,
" therefore, feel compelled to refuse the injunction to re-
" strain the defendants from proceeding with the legal rem-
" edy which they have instituted in the State Court. The
" remedy of the parties is to allow the proceedings to pass
" to judgment, and if the highest court of the State should
" decree against the construction of the Fourteenth Amend-
" ment, which is claimed by them, and which this court has
" assented to, *then they can carry the case up by writ of er-*
" *ror to the Supreme Court of the United States, and have*
" *the whole question reviewed.*"

And in the latter case cited, *supra,* (Yick Wo. v. Crowley, 26 Fed. 210,) after exhaustive review of the authorities, the court said:

" This is clearly within the prohibition of the statute, as
" repeatedly construed by the courts; and this court has no
" authority to restrain those proceedings. Within the last
" fifteen years a great many applications, under a great va-
" riety of circumstances, have been made to this court for
" preliminary injunctions to restrain proceedings in the
" State courts in civil cases, *and they have invariably been*
" *denied,*" etc.

See, also, opinion of Mr. Justice Bradley, in Haines v. Carpenter, 91 U. S. 254, and the strong language employed by him in this connection, and holding against injunctions by the Circuit Federal Courts of one State being levied against proceedings had in the State Court of another State, saying: *"This is one of the things which the Federal Courts are expressly prohibited from doing."*

" After a decree has been completely carried into effect, a
" motion for injunction cannot be made in the cause as it is
" out of court."

Kerr on Injunctions, p. 662.

In Beach on Injunctions, Vol. 1, § 75, touching upon the question of "Extra-Territorial Jurisdiction," the author says:

"Jurisdiction by *injunction* does not extend *beyond* the "State in which the injunction was issued unless the court "has acquired jurisdiction of the *person* of the defendant."

Western Union Tel. Co. v. Pacific, etc. Tel. Co., 49 Ill. 90, where the court said:

"The jurisdiction of our courts is only co-extensive with "the limits of our State. *They cannot legally send their pro-* "*cess into other States and jurisdictions for service.* If the "exercise of such a jurisdiction were attempted and an in- "junction granted, and it should be disobeyed by persons "in Indiana, this court would be powerless to enforce the "injunction by attachment, and hence the effort to exercise "such a power would be readily defeated. * * * 'The "courts of this State *cannot* restrain citizens of another "State who are *beyond* the limits of this State from per- "forming acts in another State, or elsewhere outside of and "beyond the boundary lines of this State. Any other prac- "tice would necessarily lead to a conflict of jurisdiction."

Hazlehurst v. Savannah, etc. R. R. Co., 43 Ga. 13;
Adams v. Lamar, 8 Ga. 82;
Dearing v. Charleston Bank, 5 Ga. 497."

"'And an order will *not* ordinarily be granted staying "plaintiff from pursuing in the courts of another State "*lands situated therein, belonging to defendant,* as such an "order would be a violation of the comity between the courts "of different States;

Durant v. Pierson, 12 N. Y. Sup. 145, distinguishing Brewer v. Durant, 43 Hun. 348'."

"The inconvenience of ascertaining facts and of going to "another State to defend the action there, is not sufficient "ground to enjoin the prosecution of an action there.

Donnelly v. Morris, 59 N. Y. Super. 557."

"*Sec.* 78. *Same Subject Illustrated in Alabama.*—It has "lately been decided by the Supreme Court of Alabama in a "case in which *both parties were citizens of Alabama*, that a "court of equity of that State had power by judgment *in* "*personam* to restrain defendant from further prosecuting "an action by attachment and garnishment in a Louisiana

" court, to reach *money* due plaintiff in that State, which, " under the laws of Alabama, is exempt from legal process, " but which is not exempt in Louisiana;

Allen v. Buchanan, (1892,) 11 So. Rep. 777; *Ib.* 97 Ala. 399.

" Note 1. The following is from the opinion: 'And so " long as the relief sought may be worked out directly on the " *person* of the defendant, and indirectly through his person " or property in a foreign jurisdiction, it is immaterial what " form the decree assumes'," etc.

And the author adds:

" The foregoing doctrine, though upheld by the highest " authority, has been criticized by some as an undesirable " inheritance from the English Court of Chancery and as " incompatible with our free institutions." (N. 2.)

In the note (2) referred to, it is said:

" In commenting upon such Alabama decision, the edi- " tors of the American Law Review, for May-June, 1893 (27 " Am. Law R. 469,) use this language: 'It should be added " that while the Supreme Court of the United States has " recognized this doctrine as not infringing upon the Fed- " eral Constitution, (Cole v. Cunningham, 133 U. S. 107,) " there is a good deal of American authority against the pro- " priety of the exercise of such a power. It is a doctrine " which we have inherited from the English Court of Chan- " cery, whose practices were in many cases grossly tyranni- " cal. That court did not hesitate, by exerting its power *in* " *personam*, against any person whom it could catch within " its jurisdiction, to decide controversies depending in any " part of the world, even in regard to *land titles*, which are " of strictly *local* cognizance. It is believed that the exercise " of the power ought to have been rejected by American " courts from the first as incompatible with the principles " of our free institutions. The fact that so many of them " have laid hold of it and upheld it, is a striking illustration " of what may justly be called selfishness of courts, proving " that judges are just as greedy of jurisdiction as men are of " gain, and in obedience of the same law of human nature'."

The New York Law Journal, of date June 9, 1893, in lend- ing its emphatic endorsement of the foregoing protest, has this to say:

" We concur in the spirit of these remarks to the extent of " believing that the power to issue injunctions against act-

" ions in sister States should be sparingly exercised, and " only when the peculiar necessity therefor is very obvious. " * * * In Kittle v. Kittle, 8 Daly, 72, the rule is stated " that our courts, from motives of comity and public pol- " icy, will not restrain parties by injunction from proceed- " ing in actions commenced by them in other States, except " in very special cases, to prevent injustice and oppression. " * * * On the whole, we believe that this special branch " of equity jurisdiction should not be extended beyond the " limits set by existing authorities."

In Averill v. Southern Ry. Co., 75 Fed. 736, it is said:

" 25 Stat. 433, provides that no civil suit shall be brought " in a Federal Court against any person by any original " process or proceedings in any other district than that " whereof he is an inhabitant. *Held*: *That a corporation of " one State cannot be affected by an order or writ of injunc- " tion issued by a Federal Court in another State.* * * * " As such writ or order operates only on the *person*, and the " person must be within the jurisdiction."

Before closing this branch of the argument, as well pointed out in the opinion of the Circuit Court of Appeals, at pages 556-7 of record:

" To this bill filed in the State Court of Alabama, the ap- " pellee,—(the Petitioner here,)—joined by the other cor- " porations made respondents therein, filed their joint and " separate answers, demurrer, pleas and motion, the copy of " which filed papers, as shown in the record, without the ex- " hibits, covers ten and one-half closely printed octavo pages. " In connection with which we note in the additional brief " submitted for the appellee (Petitioner,) this language: " 'It was absolutely necessary to file an answer in the Chan- " bers County suit within thirty days after the filing of said " bill to prevent the rendition of a decree *pro confesso*."

In view of such admitted appearance and the filing of its said defense in said Alabama State Court, we submit, Petitioner is committed to that forum. And the Alabama State Court jurisdiction attaching, its exercise *cannot be enjoined.*

Sec. 720, R. S.;
Peck v. Jenness, 7 How. 320.

VII.

TITLED VESTED IN "THE ALABAMA & GEORGIA MANUFACTURING COMPANY, OF THE STATE OF ALABAMA, CHAMBERS COUNTY," AND DULY RECORDED THEREIN,—PURCHASERS AND THEIR PRIVIES HAVING BOUGHT AND TAKEN POSESSION OF ITS LEGAL ESTATE WITH KNOWLEGE OF ITS PRIOR RIGHT AND TITLE, POSSESSORS IN BAD FAITH AND HOLDING IN FRAUD OF THOSE RIGHTS, AND CANNOT FOUND A PRESCRIPTIVE RIGHT THEREON.—NO ESTOPPEL AGAINST SAID ALABAMA COMPANY.

It affirmatively appears on the face of the record in this cause, that the original *Alabama* corporation entitled "The Alabama and Georgia Manufacturing Company," and *it* only, was, in 1866, seized and possessed of all the lands and property in controversy, and there is absolutely no evidence whatever to the contrary. (Rec. pp. 486-7, 505, 544, 177, 184, Op. C. C. A. p. 556, 127 Fed. 501.)

Thus, by virtue of the registry of said deed in the Probate Court of Chambers County, as explained; by virtue of all the other collateral facts more fully detailed under our preliminary review prefacing this brief, and patent on the face of the records, and lastly, through said J. J. Robinson, Trustee, and the notice, actual and constructive, which *he* likewise had, as shown under our proposition "V" hereinabove, it follows:

1st.—That *knowledge* of the title, rights and interests vested in the said "The Alabama and Georgia Manufacturing Company *of the State of Alabama, Chambers County,*" was thereby brought directly home to both the said L. Lanier and Robinson, Trustee, and through them, as well as through other independent avenues of notice, both express and constructive, that knowledge was also, in turn, brought home to those claiming by, under or through them, and their privies, whether as purchasing bondholders or as the West Point Manufacturing Company, or the Galeton Cotton Mills, or the Petitioner, the Riverdale Cotton Mills;

2d.—That the said purchasers and their privies, including the Petitioner, having bid and bought through the said L. Lanier, and taken possession of its legal estate with full

knowledge of said prior right and title vested in the said *Alabama* corporation as such, were purchasers *in bad faith,* and posessors holding throughout *in fraud* of the rights of that *Alabama* Company;

3d.—That the said purchasers and their privies, so holding under an alleged title in bad faith, and their possession having been taken in disregard of the rights of the said *Alabama* Company, of whose title the claimant had or could have been fully informed, with proper inquiry, *cannot found a prescriptive right* upon such a title;

4th.—That the said named *Alabama* corporation, holding a deed to all the property in controversy, which it has placed on record, and never having been made a party to the suit in the Georgia Court, and the Georgia Court being without jurisdiction to pass adversely upon its rights, *is not estopped* from making its claim thereto in the Alabama State Chancery Court, as it has done under its said bill (for redemption) of May 2d, 1901.

For the better information of the court, Respondents, having been at special pains to throw all possible light upon the recognized peculiar circumstances and conditions constituting the *facts* of this particular case, in now insisting upon the foregoing four important propositions of *law,* as applicable thereto, beg to subjoin in support thereof, a number of authorities, each group classed under its own distinctive head, all of which, considered singly and as a whole, with special reference to the said facts and legal propositions deduced therefrom, would seem to be conclusive and determinative in the case at bar.

First and Second—As to Notice, Actual and Constructive.

In Simmons Creek Coal Co. v. Doran, 142 U. S. 417, 425-450, after statement of the case, in the course of an instructive review of the authorities, Mr. Chief Justice Fuller, in the opinion, said:

" Apart from this we hold Appellant chargeable with no-
" tice. The *rule* is thus stated by the Virginia Court of Ap-
" peals, in Burwell's Adm'rs. v. Fauber, 21 Gratt. 463: 'Pur-
" chasers are bound to use a due degree of caution in making
" their purchases, or they will not be entitled to protection.

" *Caveat emptor* is one of the best settled maxims of the " law, and applies exclusively to a purchaser. He must take " care, and make due inquiries, or he may not be a *bona fide* " purchaser. He is bound not only by actual, but also by " constructive notice, which is the same in its effect as actual " notice. He must look to the *title papers* under which he " buys, and is charged with notice of all the facts appearing " upon their face, or to the knowledge of which anything " there appearing will conduct him. He has no right to shut " his eyes or his ears to the inlet of information, and then " say he is a *bona fide* purchaser without notice." (Authori- " ties.)

" Lord Hardwicke observed in LeNeve v. LeNeve, Amb. " 436; 3 Atk. 646; 1 Ves. Sen. 140: 'That the taking of a " legal estate, after notice of a prior right, makes a person a " *mala fide* purchaser," etc.

And after laying down the *rule*, as briefly quoted above, this court held, among other things, to the following effect:

" When each and all of the individuals who organize a " corporation under a State law, had knowledge or actual " notice, of a defect in the title to lands acquired by the " corporation through them, *their* knowledge or actual no- " tice was knowledge or notice to the *Company*, and if con- " structive notice bound them, it bound the Company." " (H. N. 4.)

" The rule of *Caveat emptor* applies exclusively to a pur- " chaser, who must take care, and make due inquiries, and " is bound by *constructive* as well as by *actual* notice—the " latter being equivalent in effect to the former; but, in ap- " plying the rule, each case must be governed, in these re- " spects, by its own particular circumstances. (H. N. 6.)

" Actual and unequivocal adverse possession of land is no- " tice to the purchaser; it is incumbent upon him to ascer- " tain by whom and in what right it is held, and the unex- " plained neglect of this duty is equivalent to notice." (H. " N. 7.)

" A purchaser must be presumed to investigate the title of " the property he purchases, and may, therefore, be presum- " ed to have examined every instrument forming a link, di-

" rectly or by inference, in that title; and that presumption " I take to be the foundation of the whole doctrine."

Story's Eq. Jurisp., Vol. 2, p. 362, note to § 1020.

" In Goundie v. Northampton Water Co., 7 Barr, 233, it " is decided that after the registry of a deed, the owner need " not give notice of his title at sheriff's sale of another title, " nor to one making improvements. The party who has " placed his written title *on record* has given the notice which " every person is bound to know and respect. The law does " not require him to go further."

Knouff v. Thompson, 16 Pa. St. 357.

" Trustees and other representatives, *with custody of* " *papers*, have ample opportunities to discover *defects in the* " *title* of property in their care, and *are estopped* from set- " ing up title adverse to their trust."

Code of Georgia (1895,) Vol. 2, p. 1463, § 5153, citing:
Benjamin v. Gill, 45 Ga. 113;
Allen v. Solomon, 54 Ga. 486.

" A party is not entitled to an injunction who shows that " he has been negligent and careless in guarding his rights, " and that if he has been subjected to loss, it was because he " had not attended to his interests in proper time. (28 Ga. " 117.) If a party, by reasonable diligence, could have had " knowledge of the truth, equity will not relieve. (Code, § " 3136.) That it was his duty to have *searched the records* " and examined the premises, etc., * * * (See 28 Ga. " *ut sup.*, and 60 *Ib.* 395, 396.) As this applies with in- " creased force to judicial or quasi-judicial sales, where " *'caveat emptor'* is the *rule* that purchasers are to observe."

Wylly v. Gazan, 69 Ga. 517-8; see, also,
Code of Georgia, Vol. 2, § 5449; 14 Ga. 157.

In Johnson v. Thweatt, 18 Ala. 741, 747, it is said:

" The principle is well settled, that when a purchaser can- " not make out his title but by a deed which leads him to an- " other, he cannot be a purchaser without notice of this *other* " deed, and, of course, of all its provisions. A purchaser has " the right to call for and examine the chain of title to the " land he is about to purchase, and if he neglects to do this " and purchases without seeing the deeds, through which he " is receiving title, it is his own *folly;* in the language of the

" authorities, it is *crassa negligentia*, and he cannot protect " himself from the consequences of notice, by insisting up- " on his own folly or neglect." (Authorities.)

" This case was approved fully in Witter v. Dudley, 42 " Ala. 616, 621-2, upon the authority of 2 Leading Cases in " Eq., W. & S. 153, and Jones v. Smith, 1 Phil. Ch. R. 243, the " court adding: 'This case has never been overruled or ques- " tioned by this court, and we feel constrained to adhere to " it."

In Wade on the Law of Notice, § 12, it is said:

" It was held by Judge Bliss that 'If the deed was actually " put upon record, although not so acknowledged that the " record would be constructive notice, and *if the party saw* " *that record*, it would be very strong, if not conclusive evi- " dence of the actual notice required by the statute. The ob- ' ject of the registry act is to protect *innocent* purchasers, " and no subsequent purchaser can be innocent *who knew of* ' *a previous conveyance.*" (Authorities.)

" The learned judge would probably have gone further, " had the case required it, and laid down the doctrine that " one who had seen a *copy* of the prior deed, under such cir- " cumstances, would be in possession of such notice as to " render *fraudulent* a subsequent purchase by him of the " property thereby conveyed." (pp. 10-11.)

" The most obvious and direct manner in which the sub- ' sequent party may be warned of the adverse interest is by " *actual knowledge of the prior conveyance or equity;* for in " determining questions of *good faith, knowledge* is regarded " as equivalent to *notice of the highest degree.* * * * * " Then would naturally follow in their order, *express notice,* " or *direct information, oral* or *written*, from some person " in possession of actual knowledge; and *implied* notice, or " knowledge of collateral circumstances, sufficient to put the " purchaser or incumbrancer upon inquiry leading to the " truth." (Sec. 65, p. 44.)

In Angle v. N. W. Mut. L. Ins. Co., 92 U. S. 342, (23 L. ed. 556,) it is said:

" Constructive notice in such cases is held sufficient, upon " the ground, that, when a party is about to perform an act " which he has reason to believe may affect the rights of " *third persons*, an inquiry as to the facts is a moral duty, " and diligence an act of justice. Whatever fairly puts a " party upon inquiry in such a case is sufficient notice in " equity, where the means of knowledge are at hand; and if " the party, under such circumstances, omits to inquire, and " proceeds to do the act, he does so at his peril, as he is then " chargeable with all the facts which by a proper inquiry, he " might have ascertained." (Authorities.)

In Am. & Eng. Ency. of Law, Vol. 16, p. 791, it is held:

" In Griffith v. Griffith, Hoff. Ch. (N. Y.), 153, it is said " that 'Constructive Notice is of two kinds—that which arises " upon testimony, and that which results from a *record*. In- " stances of the latter are the contents of all *public records*, " which are declared to be *notices to all persons*'."

" The principle of the doctrine of constructive notice is, " that when a person is about to perform an act by which he " has reason to believe that the rights of a *third party* may be " affected, an inquiry into the facts is a moral duty, and dili- " gence is an act of duty. Hence, he proceeds at his peril " when he omits to inquire, and is chargeable with a knowl- " edge of all the facts that by a proper inquiry he might have " ascertained. This neglect is followed by all the conse- " quences of *bad faith*, and he loses the protection to which " his ignorance, had it not proceeded from neglect, would " have entitled him."

Pringle v. Phillips, 5 Sandf. (N. Y.), 157."

" The *filing of a bill* is considered by all the authorities as " tantamount to actual notice. In fact, it is the *most solemn* " *and authoritative* of all forms of notice."

Gordon v. Tweedy, 74 Ala. 235.

" Where one is put upon inquiry, as by references con- " tained in his *title deeds*, he is chargeable with knowledge " of what he might have ascertained by due inquiry."

Oliver v. Piatt, 3 How. 410, 11 L. ed. 622; see also:
McClure v. Township of Oxford, 94 U. S. 432, 24 L. 129;
The Lulu, 10 Wall. 201, 19 L. 906.

Third—As to Title by Prescription.

In Gaines v. Hennen, 21 How. 553, 568-9, this court said:

" By the article of the Code, 3484, a legal interruption of " the prescription takes place where the possessor has been " called to appear before a court of justice, either on " account of the property or the possession, and the pre- " scription is interrupted by such demand, whether the suit " has been brought before a court of competent jurisdiction " or not. * * * After the interruption of the prescrip- " tion by the filing of the bill by the complainant, the de- " fendants could no longer claim to be in possession in good " faith, as that is defined in the Civil Code. In Article 3415 " the possessor *in bad faith* is *he* who possesses as master, " but who assumes this quality *when he well knows that he* " *has no title to the thing, or that his title is vicious and de-* " *fective.*

" The possessor must not only not be in *bad faith*, but in " the positive belief that he is the *true* owner, and if he " doubts the validity of his title, his possession is not the " basis of prescription."

Troplong Prescription, Vol. 2, p. 451, No. 927;
Ib. p. 444, No. 918;
Ib. p. 442, No. 915."

" Possessors in *bad faith cannot* claim the benefit of pre- " scription."

Gaines v. New Orleans, 1st Wood, U. S. Rep. 104;
Ib. 6 Wall. 715-6.

In Hunt v. Dunn, 74 Ga. 120, it is said:

" 1.—It is unquestionably true that the written title on " which a possession is based, to sustain a *prescription*, " must be neither forged nor fraudulent, if 'notice' of the " fraud or forgery 'be brought home to the claimant before " or at the commencement of his possession'." (Code, 2683.)

" The question here is, did Thompson and Cross have ac- " tual notice that they were purchasing a *bad* title when " they took possession? If they did, then their purchase " was *bad*, and they went into possession in fraud of the " rights of the true owner.—44 Ga. 573, 51; *Ib.* 139.

" In the last cited case, it is held that the claimant, when " he went into possession of the property, had knowledge " that his written evidence of title was fraudulent, or if

" notice thereof was brought home to him at the commence-
' ment of his possession, or before, then he *cannot found a*
" *prescriptive* right upon such title. That which puts a
" party upon inquiry is actual notice, as has been frequently
" held by this court.

" In Jordan v. Pollock, 14 Ga. 157, it is said: 'That no-
" tice is sufficiently actual, which by the proof, either posi-
' tive or presumptive, brings home to the purchaser such
" knowledge of the circumstances as authorizes the clear
" and satisfactory conclusion that he had notice of the prior
" incumbrance, or such as renders proper the conclusion
" that he was, or should have been, put upon inquiry.'
' (italics ours), 'that such notice is, in the language of Sir
" Edwin Sugden, '*good notice*,' and is so because it author-
" izes a conclusion which affects the conscience of the pur-
" chaser, and makes it a *legal fraud* in him to buy under the
" circumstances. If, under such notice, he afterwards buys,
" *mala fides* marks the transaction.

" See also, 69 Ga. 92, 98, 99, 100, which is in point, if not
" all-fours, with the present case. Johnson v. Dooley, 72
" Ga. 297.

' The doctrine is, in great measure, taken from Jones v.
" Smith, 1 Hare, 55, which was affirmed on appeal. 1 Phil-
' lips, 244.

" The conclusion deduced from all the English authori-
" ties by an eminent commentator, is, that the principle is
" well established, 'that whatever is notice enough to excite
" attention and put the party on his guard and call for in-
" quiry, is also notice of everything to which it is after-
" wards found that such inquiry might have led, although
" all was unknown for want of the investigation; that is,
" where a person has sufficient information to lead him to a
" fact, he shall be deemed cognizant of it.' 2 Spence Eq.
" Jur. 757, and cases cited in notes (b) and (c) there.

" The section of our own Code under consideration was
" designed to protect a possession held under a title acquir-
' ed in *good* faith, and *not one taken in disregard of the*
" *rights of another person*, of whose title the claimant had
" been informed, and about which, with proper inquiry, he
" might have had full knowledge, if he had made the re-
" quisite effort to inform himself.

" 2.—This court has carried this principle so far as to
" hold that a possession originating in fraud, cannot be
" *tacked* to one subsequently acquired, in order to complete
" the term of years necessary to give the tenant title by
" prescription, though such tenant be an innocent purchas-
' er from the fraudulent grantor. 63 Ga. 360."

In Cowart v. Young, 74 Ga. 694, 696, it is said:

"It is now too well settled in this State to require argument or demonstration, that if a person takes possession of land which he knows does not belong to himself or any one from whom he purchases, no prescription will run in his favor, however long he may hold the possession of the same. His possession, under these circumstances, originated *in fraud, and time will not cure or sanctify the fraud.*"

"Prescription does not run in favor of one buying with full knowledge that title is in *third party.*" 80 Ga. 178-186.

Fourth—As to Estoppel—None if Deed Recorded.

To this proposition, see accompanying brief of associate counsel, Mr. Erwin, citing and quoting the recent decision of this court *in re* Wiser v. Lawler, 189 U. S. 271, and the authorities there reviewed, which fully cover the conditions in the case at bar, and are conclusive.

In Brant v. Virginia Coal & Iron Company, 93 U. S. 326, 337, it is held as follows:

"For the application of the doctrines of equitable estoppel, there must generally be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on his part as amounts to constructive fraud, by which another has been misled to his injury." (H. N. 2.)

"Where the estoppel relates to the title of real property, it is essential to the application of the doctrine, that the party claiming to have been influenced by the conduct or declarations of another was *himself* not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to *both* parties, or *both* have the same means of ascertaining the truth, there is no estoppel." H. N. 3.)

In stating the case and delivering the opinion of the court, Mr. Justice Field said:

" The purchaser was bound to take notice of the title. He " was directed to its source by the pleadings in the case. " The doctrine of *'Caveat Emptor'* applies to all judicial " sales of this character; the purchaser takes only the title " which the *Mortgagor* possessed." (pp. 335, *et seq.*)

" Silence will not always work an estoppel, for silence " may not always be inequitable, and, moreover, a person " is not bound under all circumstances to speak out. He " may not, for example, be bound to declare that which is " *a matter of record*, and of which he has a right to pre- " sume the other party has notice."

Bispham's Principles of Equity, ! 284.

" The party setting up the estoppel must actually be de- " ceived by the conduct of the other party. *If he acts with " a full knowledge of the rights and title of the other party, ' he cannot complain if that title is subsequently asserted.*"

Bispham's Principles of Equity, § 289, citing list of authorities, including: Lewis v. Ford, 87 Ala. 143.

" As to the question of 'Estoppel,' 'res adjudicata,' *gener-* " *ally*, see:

Russell v. Place, 94 U. S. 606;
Goodman v. Winter, 64 Ala. 410, 430-1.

The application of the foregoing precedents to the situation as presented by the particular facts outlined in this immediate connection, *supra*, and patent on face of the record at large, is so obvious as to call for no comment.

VIII.

THE ALABAMA AND GEORGIA COMPANY IS A NECESSARY PARTY.

The contention of Petitioner's counsel, that The Alabama and Georgia Manufacturing Company, whether of Georgia or of Alabama, was not a necessary party to the Robinson bill, cannot, we respectfully insist, be maintained.

We need not controvert the general doctrine recognized in most jurisdictions, that the mortgagor is not a necessary party to foreclosure proceedings where it is made to appear that he has, prior to the foreclosure suit, parted with all his interest in the property.

In the first place, the complainant so framed his bill as to render The Alabama and Georgia Manufacturing Company of Georgia not only a proper, but a necessary party.

In the second place, it is not made to appear that The Alabama and Georgia Manufacturing Company (the Alabama corporation,) has parted with all its interest in the mortgaged property.

As to the first proposition, it is to be observed that the complainant in the Robinson bill expressly prays for personal decrees against said Georgia Company as follows:

1. For an account of the bonded debt. 2. For an account of attorneys' fees, and that said company be required to pay the same, and all costs of the foreclosure suit, by a short day to be named in the decree. 3. That said company, by name, be debarred and forever foreclosed of and from all equity of redemption in its property and riparian rights. 4. That said company deliver up all papers, deeds, and other writings in its power, custody or control relating to the premises. 5. That an injunction issue against said company. 6. That a receiver be appointed for said company. 7. That other or further relief be granted.

Thus it is seen that the frame of the bill, itself, makes the Alabama and Georgia Manufacturing Company of Georgia a necessary and indispensable party, inasmuch as the court could not have granted a solitary prayer of the bill without the presence of that company.

As to the second proposition, the only basis for the position taken, that the Alabama and Georgia Manufacturing Company, (The Alabama corporation,) has parted with its title and interest in the Alabama property, is the meagre extracts from certain alleged foreclosure proceedings and sale by a sheriff or receiver in the Superior Court of Troup County, Georgia, appearing in the record of the Robinson suit, indicating that the Huguley Manufacturing Company of Georgia had purchased the property so sold.

Inasmuch as it is patent, under the uniform decisions of this court, and most others, (some of which have been reviewed under our "IV" head of this brief), that a court of equity cannot by its own decree, or by its commissioner, or sheriff, or receiver, or other officer, sell and convey real property located in another State, this allegation is fatally insufficient to show that said company has been divested of its interest in the Alabama property.

While it is true all necessary intendments will be made in favor of the regularity and validity of the proceedings and judgment of a court of general jurisdiction, and that presumption might perhaps have been indulged in this case if the averment had simply been that the property had been sold under foreclosure proceedings in the Troup County court, here, there is no such averment. On the contrary, the *quo modo* is precisely averred, viz: that *the sale was made by the sheriff*. The averment that the sale was made by the sheriff negatives any idea of a sale and conveyance by the court, and by the party having the legal title and subject to the jurisdiction of the court, and conveying pursuant to its decree in addition to the sheriff's deed.

It is sufficient to say, that the Alabama and Georgia Manufacturing Company (the Alabama corporation,) was no party to the Robinson suit, in which these alleged proofs were made. That it has a right to be heard to controvert the validity of any foreclosure and sale alleged to have been made by a proceeding in Troup County, Georgia, of its property situate in Alabama.

The evidence taken in the Robinson suit, to which it was not a party, is not even admissible against it, much less is it conclusive.

But sufficient appears upon the face of the allegations in the pleadings in the Robinson suit, to show that said Troup County proceedings were certainly not effective to convey title out of the Alabama and Georgia Manufacturing Company of Alabama, to the Alabama property.

Indeed, the answer of the Riverdale Cotton Mills to the Alabama bill, (Rec. p. 518,) distinctly avers:

" That said Troup County sale was made and advertised " in Georgia, and neither made nor advertised in Alabama, " *nor has said Huguley Manufacturing Company ever ac-* " *quired any title or claim to the same by proceedings in Ala-* " *bama.*"

On the other hand, the Alabama bill of the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (the *Alabama* corporations) distinctly, in paragraph First (Rec. p. 486,) avers title in the Alabama and Georgia Manufacturing Company (the *Alabama* corporation,) and in the seventh paragraph (Rec. p. 492,) it is averred that the Huguley Manufacturing Company (the Alabama corporation), had purchased the same, but it is nowhere averred that title had been conveyed to it, or that it was more than the equitable owner. Nor is it anywhere averred in said Alabama bill, that the claim of the Huguley Manufacturing Company, (the Alabama corporation,) is in any way dependent upon the alleged Troup County proceedings.

It is therefore pure assumption that the Alabama and Georgia Manufacturing Company of Alabama, is not the holder of the legal title to said Alabama property, and is not deeply interested in its protection.

In the third place, irrespective of the sufficiency of the allegations of the bill, to show regular and efficacious proceedings in the Troup and Harris Counties, Georgia, chancery sale, to pass the interest of the said company in the

property, such divesture of its title occupies a different footing, as respects its status with reference to subsequent foreclosure proceedings, than would the company's own transfer or assignment.

Worthington v. Lee, 2 Bland's Chan. Rep. 678.

In the above cited case the mortgagor's equity of redemption, as alleged in the case at bar, was sold under judicial process, and upon a bill subsequently filed for foreclosure it was urged that the mortgagor, or rather his heirs (he being dead), were not proper or necessary parties. The court, after referring to cases of assignment of the equity of redemption, says:

"On the contrary, instead of the mortgagor's having "been divested of his estate by an assignment which he can- "not controvert, and so as to leave him in no way liable, "his equity of redemption alone, has been taken in execu- "tion and sold; the fact and validity of which sale he may "deny, and put in issue by an action of ejectment or by a "suit in equity of this kind, involving a decision upon the "right. Hence, it is essentially necessary, that this ques- "tionable title to the equity of redemption, as derived from "the judicial sale should be entirely put to rest by calling "before the court, as well the mortgagor, as him who claims "as purchaser at the judicial sale."

Again, besides being interested in the account prayed, of the mortgage debt and attorney's fees, the mortgagor in the case at bar is liable personally for any balance of the mortgage debt which may remain after applying the net proceeds of sale, and that liability was incapable of being enforced in any proceeding to which it was not a party.

In the said case last cited, *supra*, the court further said:

"In the stating of such an account the mortgagor has a "direct interest; because it fixes the amount of his interest; "and the mortgagee also has an interest in it, * * * be- "cause, in so far as the mortgaged property fails to produce "satisfaction of the amount so shown, the mortgagor may "again have recourse to his judgment at law, or avail him- "self of any other proceeding, either at common law or in "equity, to enforce payment of such unsatisfied balance, "and, therefore, upon this third ground, also, it is proper "that the mortgagor should be a party defendant to this "suit."

If it should be contended that the mortgagor is merely a proper, and not a necessary party, to the taking of the account, that might be true in those cases where a *personal* decree against the mortgagor for the *balance* of the mortgage debt, after applying the proceeds of sale, could not be, or was not, sought in the foreclosure proceedings.

In the case at bar, a personal decree *was* sought and actually rendered against the alleged mortgagor, The Alabama and Georgia Manufacturing Company of Georgia, both for the full amount of the mortgage debt, to be paid in thirty days from the decree, and execution was also awarded for any *balance* remaining unsatisfied from the sale. (Rec. pp. 356, 360, 362, 462, and see p. 4 of this brief.)

To such a decree the said company was not only a *proper*, but a *necessary* party.

In Weldon v. Fritzlen, 123 Fed. 608, 613, (decided April 2, 1904,) the court said:

" In Thompson v. Dixon, (C. C.), 28 Fed. 5, it is said:

" 'There is but one cause of action in the case, which is the " foreclosure of the mortgage, and the proper adjustment " of the several liens upon the property. To this action the " *mortgagor*, who is the holder of the equity of redemption, " and who is liable for any *deficiency*, is a *necessary* party. " He is, indeed, the *principal* party defendant, resides in the " same State with the plaintiff, and cannot be ranged on " the same side with the plaintiff for the purpose of making " a case removable to the Federal court'."

" In a suit to foreclose a mortgage the holder or holders " of the *legal title* to the property are *necessary* parties, in " order that the decree entered, and sale thereunder, may " cut off their equity of redemption. Such holder or holders " of the legal title, and all persons against whom the plaintiff demands a *personal* decree for the indebtedness due, " are parties *necessary* to the case, and are *adversary* " parties to the plaintiff, hence *necessary parties defendant* " to the suit."

To the same effect, see:

Story's Eq. Plead. (9th ed.), §§ 72, 195, and authorities cited;

Ribon v. Chicago, etc. R. R. Co., 16 Wall. 446.

Again, the bill expressly claims, and prays for the allowance of reasonable attorneys' fees to complainant in the foreclosure proceedings (although none are stipulated for in the mortgage, (Rec. pp. 3, 123-130.) If it should be said that the mortgage debt is liquidated and fixed by the mortgage, and that therefore the mortgagor, while a proper party was not a necessary party, to the taking of the account of the mortgage debt, that contention could not be maintained in respect of the attorneys' fee.

The claim asserted in the bill is to a reasonable attorney's fee, and even if the mortgage had stipulated for a reasonable attorney's fee, the *amount* of that fee could only have been determined in one or the other of three modes: 1. By agreement of the parties. 2. By a jury in a proper action. 3. On reference to a master in the foreclosure proceedings.

It is beyond the realm of doubt or question that the mortgagor would be an indispensable party to either of these methods of determining the amount of such reasonable fee; and this, too, whether it had or not, disposed of its interest in the mortgaged property, because, notwithstanding such debt, including the attorney's fee, as the property failed to pay on the sale thereof.

"Where a person will be directly affected by a decree, he is an indispensable party."

Williams v. Bankhead, 19 Wall. 563-572.

"Both at law or in equity a suit upon a written instrument must be brought in the name of all who are *formal* parties to it ,and who retained an interest in it."

Nashville & D. R. R. Co. v. Orr, 18 Wall. 471.

"No final decree can be rendered affecting the parties to a contract sued on, without making them *all* parties to the suit."

Gregory v. Stetson, 133 U. S. 579.

"Corporations themselves are indispensable parties to a bill which affects their corporate rights or liabilities."

Swan Land & Cattle Co. v. Frank, 148 U. S. 603.

As to 'Necessary Parties in Equity,' see note to

Marshall v. Beverley, 18 U. S. (5 Wheat. 313.)

IX.

THE EQUITY OF REDEMPTION OF THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA, AND ITS PRIVIES, IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

The Huguley Manufacturing Company, of Alabama, was chartered February 27, 1890, (Rec. p. 532.)

The confirmation of sale, made under the Robinson bill, was entered June 25, 1896, (Rec. p. 395,) and under color of it the possession of the Alabama corporations of the Alabama property was finally wrested from them.

No prescription in favor of the Huguley Manufacturing Company as against the Alabama and Georgia Manufacturing Company, could have run between Feb. 27, 1890, and June 25, 1896.

It follows, therefore, that if either of said Alabama corporations had any right in said property they were necessary parties to any valid decree of foreclosure or confirmation of sale, and any claim that one company had lost its rights to the other by prescription, and was therefore not a necessary party, is wholly untenable.

" Adverse possession to be effectual, must be, actual, con-
" tinued, adverse and exclusive; possession by a *third* per-
" son will not avail unless he was *in privity* wit hthe person
" claiming."

Doswell v. De La Lanza, 20 How. 32.

" Adverse possession must be a *pedis possessio*, or an actu-
" al possession."

Simmons Creek Coal Co. v. Doran, 142 U. S. 442.

" To make out an adverse possession for the statutory per-
" iod of ten years, by tacking the possession of several hold-
" ers together, *privity* between them must be shown, and
" *continuity* of possession without break or interval."

R. R. Co. v. Philyaw, 88 Ala. 270, (6 So. 837.)

" *Continuity* is an essential element of an adverse holding
" such as can ripen into a title. Different entries at differ-
" ent times, by different persons, *between whom there is no*
" *privity of estate, nor connected claim of rightful holding,*
" are but a succession of *trespasses,* and neither can furnish

" any support to the other. (Authorities;) nor can one ad-
" verse holder 'tack' together his own several holdings, when
" he has allowed another person to acquire an intermediate
" tortious possession before his own had ripened into a title."

Ross v. Goodwin, 88 Ala. 390, 395-6, (6 So. 682-3);
See, also:
Dothard v. Denson, 72 Ala. 541;
Beard v. Ryan, 78 Ala. 37;
Hughes v. Anderson, 79 Ala. 215;
Hulsey v. Clark, 49 Ga. 102; and
Gaines v. Hennen, 21 How. 553, 568-9, quoted under our proposition VII, *supra,* (subhead "Prescription.)"

Again, it is to be noted that this defense is sought to be set up, not by The Huguley Manufacturing Company, but by The Riverdale Cotton Mills.

" The statute of limitations is a personal defense, and also
" the only way in which statutes of limtiations are available
" as a defense is where they are *specially pleaded* at the
" proper time."

Gormley v. Bunyan, 138 U. S. 635, 34 L. 1086;
Campbell v. Holt, 115 U. S. 625;
Bolling v. Jones, 67 Ala. 508;
Huss v. C. R. & B. Co., 56 Ala. 472;

It is quite clear The Riverdale Cotton Mills does not claim by, through, or under The Huguley Manufacturing Company, and, therefore, cannot avail itself of the latter's right, if any, to plead the statute.

It is equally clear that it has never pleaded the statute. See its answer to the bill filed by The Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company in the Alabama State Court, (Rec. pp. 510-21); also, bill of complaint filed by The Riverdale Cotton Mills v. Alabama and Georgia Manufacturing Company, *et al.,* in Circuit Court, for injunction. (Rec. pp. 473-82.)

In neither the said answer nor the said bill of The Riverdale Cotton Mills is the defense of the statute of limitations set up.

But, we respectfully insist that the question as to a right of redemption existing in The Alabama and Georgia Manufacturing Company, cannot be raised at this stage of the proceedings.

The Robinson bill is framed on the theory that such a right of redemption exists, and in express terms prays that said The Alabama and Georgia Manufacturing Company may be debarred and foreclosed by the decree of the court, of *its* equity of redemption, and *its* said equity of redemption is the only one which is in terms prayed to be foreclosed in said bill.

After such a prayer in the bill, and a decree of the court expressly following that prayer, and the Petitioner being in the attitude of claiming under the foreclosure proceedings had under said bill, the Petitioner cannot now be heard to say there is no equity of redemption in the said The Alabama and Georgia Manufacturing Company.

The Riverdale Cotton Mills' claim to the property being derived solely by virtue of the said foreclosure proceedings instituted by said bill, the Petitioner cannot be heard to claim both *under* and *against* the bill.

EQUITY OF W. H. HUGULEY & COMPANY OR THE HUGULEY MANUFACTURING COMPANY, NOT CUT OFF.

Not only has the equity of redemption vested in the said The Alabama and Georgia Manufacturing Company of *Alabama,* as owner of the legal estate, never been barred by the statute, as demonstrated, but not even that set up by its privies, W. H. Huguley & Co., or The Huguley Manufacturing Company, (as the case may be,) if any such inured in favor of either or both by virtue of the said executions and sale under the Troup and Harris Counties, Georgia, proceedings, has ever been cut off by the later decrees of sale and of confirmation (conditional) entered by the Federal Circuit Court in Georgia. This, for the obvious reason, among others elsewhere pointed out in this brief, and likewise more fully argued in the brief of our colleague, that the prayer of the original Robinson bill, only asked, and the decree of sale and of confirmation in pursuance thereof, only provided, that the equity of redemption in those *in privity with* or claiming by, through or under the said *Georgia* corporation of The Alabama and Georgia Manufacturing Company, and *of those only,* should be so barred; whereas, it has been made

clear that no person or corporation claims or, under the express limitations of the latter's charter, *could* claim anything by, through or under the said *Georgia* company, in that it owned no property whatever it could ever have conveyed, and certainly none of the property in controversy, the title in and to all of which has remained vested throughout in the said original *Alabama* corporation. Hence, since the said W. H. Huguley & Co., or The Huguley Manufacturing Company, (as their interest may appear,) claim only under the *Alabama* company, and could claim under *no other,* whatever rights or equities may be held to have attached to either or both under the conditions set forth, were unaffected by the said decrees of the said Federal Circuit Court, and whether as execution creditors or as purchasers, they may still redeem. (See Assignment of Error, *"Twelfth.)"*

XI.

NO EVIDENCE ADDUCED SHOWING THAT THE RIVERDALE COTTON MILLS, AS A CORPORATION EITHER OF ALABAMA OR OF GEORGIA, HAS EVER COMPLIED WITH THE TERMS OF THE DECREE OF OCTOBER 15th, 1898, OR HAS ANY DEED OR EVEN A CHARTER, ENTITLING IT TO ANY STANDING AS A PETITIONER IN THIS COURT.

The last modified decree ever entered by the Circuit Court in this cause, to-wit, the belated decree of October 15, 1898, provided:

" And it is ordered and decreed that the purchaser do pay " into the court *within forty days* from this date the whole of " the balance of the purchase money of said property, etc., " * * * and that *upon the certificate of the Clerk* of the " fact of such payment, *thereupon* the commissioner, S. C. " Dunlap, Esq., *do execute and deliver* to said purchaser or " such person as he may designate, *a deed* to the property " sold," etc. (Rec. pp. 446-7.)

An examination of the record in this cause from the date of the rendition of the said decree up to the last entry thereon, compassing from page 447 (the date of said decree) up to 574 (the date of certification of the writ of *certiorari,*) will disclose no compliance with the terms stipulated in the former,

on the part of either L. Lanier or The Riverdale Cotton Mills, no such "certificate from the Clerk of the fact of such payment," and no deed from even the said *commissioner,* and not even a charter to the said alleged "Riverdale Cotton Mills," whether as a corporation of Alabama or of Georgia. That there has ever been any compliance with the bid, or that the Riverdale Cotton Mills has any deed of conveyance from even the said Commissioner, or that it has ever been incorporated in Georgia, as claimed, rests wholly upon the *allegations* of the ancillary bill, without proof to support either averment.

Per contra, Respondents' Alabama bill distinctly charges that the said "Riverdale Cotton Mills" was a corporation "organized only under the laws of *Alabama,*" (Rec. p. 489,) attaching an exhibit from the Auditor of the State of Alabama certifying that said corporation (The Riverdale Cotton Mills) was "authorized to transact business as a corporation *at Rivervicw, Alabama, and at no other place.*" (Rec. pp. 497-8.) And, as recited in the opinion of the Circuit Court of Appeals, "To this bill, filed in the State Court of Alabama, the appellee, joined by the other corporations made respondents therein, filed their joint and separate answer, demurrer, pleas and motion, the copy of which filed papers, as shown in the record, without the exhibits, covers ten and one-half closely printed octavo pages. In connection with which we note in the additional brief submitted for the appellee, this language: "It was absolutely necessary to file an answer in the Chambers county suit within thirty days after the filing of said bill to prevent the rendition of a decree *pro confesso.*" (Op. C. C. A. Rec. pp. 556-7, 127 Fed. 497-505.)

We submit, therefore, that there having been no evidence whatever adduced showing or tending to show any compliance with the terms of the decree of Oct. 15, 1898, by certificate of the Clerk of the fact or by deed from even the *commissioner,* as therein specifically provided as a condition precedent to the completion of the said sale within the forty days allotted; and inasmuch as there is no evidence of any charter to a corporation entitled "The Riverdale Cotton Mills," or of organization thereunder as a *Georgia* corporation, but, on the contrary, the proof shows and Petitioner, in its said joint and separate answer, etc., ~~noted~~, has formally admitted itself to be a corporation of *Alabama*, and as such stands committed to that *Alabama* forum, in the manner pointed out by the Circuit Court of Appeals,—this Honorable Court will hardly assume the mere averments of Petitioner to be true in face of the record itself, but should, we submit, rather withhold its recognition of the right claimed by said so-called "Riverdale Cotton Mills" as petitioner for its consideration.

XII.

THE COURT ERRED, ON A BILL BROUGHT SOLELY BY THE RIVERDALE COTTON MILLS, CLAIMING UNDER AND SUBSEQUENT TO THE DECREE OF OCTOBER 15, 1898, AND CHARTERED AFTER THAT DATE, IN ENJOINING SO MUCH OF SAID ALABAMA SUIT AS SOUGHT AN ACCOUNTING FROM THE WEST POINT MANUFACTURING COMPANY AND THE GALETON COTTON MILLS, FOR RENTS AND PROFITS DURING THE PERIOD OF THEIR POSSESSION, TO-WIT, FROM SEPT. 6, 1892, TO NOVEMBER 1898.

Respondents' assignment of error, No. 13, as certified up to the Circuit Court of Appeals, on the record from the lower court, states the foregoing proposition more fully, in the following words, to-wit:

" *Thirteenth.*—Said suit of the Alabama and Georgia " Manufacturing Company, and Huguley Manufacturing " Company, corporations of Alabama, pending in the State " Court of Alabama, being a suit for the purpose not only of " redemption of said mortgage property, but also for an ac- " counting for rents and profits from other persons, to-wit: " the Galeton Cotton Mills and West Point Manufacturing " Company, who are charged with receiving the rents and " profits from September 6, 1892, to November 1, 1898, prior " to the creation of the Riverdale Cotton Mills and prior to " the conveyance set up by the Riverdale Cotton Mills by the " commissioner of the said Circuit Court under decree of Oc- " tober 15th, 1898, it was error in said Circuit Court, at the " suit of said Riverdale Cotton Mills, brought in its own be- " half and in its right as such purchaser alone, to perpetually " enjoin said complainants in said Alabama suit from the " prosecution of said suit for accounting from said other de- " fendants to said Alabama suit who are not complainants in " said alleged ancillary bill."

This proposition is elementary. Whatever equities or rights may exist in favor of the Galeton Cotton Mills and West Point Manufacturing Company, they were competent to set them up as matters of defense in the Alabama suit, *as they have done.* As to the rents and profits between September 6, 1892, and October 15, 1898, they neither acquired or hold them under the Riverdale Cotton Mills, nor is any claim thereto set up by the Riverdale Cotton Mills, by assignment or otherwise.

Yet, the decree appealed from perpetually enjoins the Alabama suit against the Galeton Cotton Mills, and West Point Manufacturing Company, and enjoins the bringing of any new suit against those corporations. It is relief granted in favor of a *stranger* to the so-called ancillary bill, and as to rights in which the complainant in that bill has no concern.

There are a number of other important propositions in favor of Respondents, raised under the assignments of error as certified up from the Circuit Court to the Circuit Court o Appeals, (Rec. pp. 542-6), the force of which will be readily impressed upon the minds of this court, particularly those emphasized in the argument of our associate counsel, Mr. Erwin, to whose accompanying brief we respectfully refer the court.

Respectfully submitted,

JOHN T. MORGAN,

Solicitor for Respondents.

JOHN M. CHILTON,
WILLIAM S. THORINGTON,
ROBERT PORTER SHICK,
Of Counsel.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1904.

~~OCTOBER.~~

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Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

THE RIVERDALE COTTON MILLS OF GEORGIA,
PETITIONER,

vs.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA,

AND

THE HUGULEY MANUFACTURING COMPANY OF ALABAMA,
RESPONDENTS.

BRIEF OF

MARION ERWIN,

Solicitor, for Alabama & Georgia Mfg. Co. and Huguley Mfg. Co., on Review on Certiorari in Supreme Court.

ATLANTA, GA.:
The Franklin Printing and Publishing Co.
Geo. W. Harrison, Manager.
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194

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ssignment of Errors, on Decree of the Circuit Court, September 29, 1902.

t.—That the said Circuit Court erred in not dismissing said ancillary bill for want of jurisdiction of the subject-matter the parties.

nd.—That the said Circuit Court erred in not dismissing leged ancillary bill, because it appears upon the face of said it it does not embrace a controversy wholly between citizens erent States, and that it is not an ancillary or dependent bill ch the Court would have jurisdiction irrespective of the citi- of the parties.

rd.—That the said Circuit Court erred in not dismissing said ancillary bill, because said bill is not ancillary to the original Robinson, Trustee, to which it was, by said decree com- of, declared to be ancillary, but was in fact an original bill t by an alleged purchaser of title to lands situate in the State bama, and in the right only of such a purchaser under decree bill of Robinson, Trustee, for the purpose of protecting the title so acquired, and the said cause not presenting a contro- between citizens of different States, the said Circuit Court ithout jurisdiction to render the decree complained of.

rth.—That the said Circuit Court erred in not dismissing leged ancillary bill, because Robinson, Trustee, being at the f the filing of his suit a citizen of Alabama, elected to the Alabama and Georgia Manufacturing Company, the a corporation, party defendant, and did not and could not he Alabama and Georgia Manufacturing Company, the Ala- corporation, a party defendant, as it would have ousted the of jurisdiction, and no decree in said Georgia suit against eorgia corporation could give the said Robinson, Trustee, or rson claiming under him, a right to enforce it against said na corporation by ancillary proceedings, by the granting of which the Court was without jurisdiction to grant on said l proceedings. And the same error is assigned as to the ey Manufacturing Company, the Alabama corporation.

h.—That the said Circuit Court erred in not dismissing said ancillary bill, because the same was a suit by which, through of injunction served in Alabama, the Alabama and Georgia acturing Company and the Huguley Manufacturing Com- both corporations of Alabama, resident in the Middle Dis- Alabama, and their solicitors of record in a suit pending in na, were brought before said Circuit Court, and although

timely objection was made by said defendants to the jurisdiction of said Circuit Court over their persons in said suit, they were perpetually enjoined by said decree complained of; the said Circuit Court not having jurisdiction of the persons of the defendants for the purpose of rendering said decree perpetually enjoining them.

Sixth.—That the said Circuit Court erred in rendering said decree complained of because the said alleged ancillary bill on which said decree was rendered was a suit for injunction for the protection of an alleged title to lands situate in Chambers county, Alabama, and against two Alabama corporations, and was a suit of a local nature maintainable only in a State court of Alabama, or in the Circuit Court of the United States for the Middle District of Alabama.

Seventh.—That said Circuit Court erred in rendering decree complained of because it enjoined and stayed proceedings in a Court of the State of Alabama in contravention of the provisions of section 720 of the Revised Statutes.

Eighth.—That the Court erred in rendering the decree complained of because there was no evidence or proof to support the relief granted: in this, that said decree was rendered upon said alleged ancillary bill, and the answer of respondents thereto, and with no evidence taken or heard in support of the allegations of said bill, save and except the record of the proceedings on the original bill of Robinson, Trustee, which did not extend to or establish the new matters set up and averred in said alleged ancillary bill, and which were not admitted in the answer of respondents, and which were put in issue by the answer of respondents, to wit: the allegations of said alleged ancillary bill (1) as to the identity in fact and in law of the Alabama corporations, complainants in the Alabama suit, with the defendant, Georgia corporations of the same name in Georgia; (2) as to the situation of said lands, the subject-matter of said Alabama suit, being in Georgia instead of Alabama; (3) as to there never having been any organization of the Alabama and Georgia Manufacturing Company of Alabama under its charter granted under the laws of Alabama; (4) as to said Alabama corporation never having had a place of business in Alabama; (5) as to the fact that it was the Georgia corporation (chartered afterwards) and not the Alabama corporation of the same name which was seized of and held title to the lands in Alabama; (6) as to the binding force against the Alabama corporation of the order of sale, sale and confirmation, all made after the charter of the Georgia corporation had expired, as averred in respondents' answer, and made in proceedings against the Georgia corporation and not against the Alabama corporation; (7) as to the Riverdale Cotton Mills, being a citizen of Georgia and not a corporation created under the laws of Alabama, as averred in the answer; affirmative proof of said facts in issue being essential for the relief granted by said decree complained of.

Ninth.—That the Court erred, in granting said decree complained , because the pleadings and proof on which it was rendered did ot make a case for the equitable relief granted.

Tenth.—That if the decree of the said Circuit Court made March , 1895, fixing the amount of the mortgage debt and declaring it reclosed, rendered against the Alabama and Georgia Manufac- ring Company, the Georgia corporation, before its charter ex- red, can be held to operate by way of estoppel on the corporation Alabama of the same name, the charter of the Georgia corpora- on having expired by limitation on March 21, 1896, before order sale, and before sale, and prior to the right of redemption being rred, the remedy of said alleged purchaser was to set up subroga- on to the rights of the mortgagees and to bring suit in the appro- iate court in Alabama on the said decree of March 30, 1895, and ainst the Alabama corporations for such relief as they are entitled thereon, and in due course to compel a conveyance to it of the operty, and there was no equity shown by the pleadings and oofs to authorize the relief granted under the said alleged ancil- y bill.

Eleventh.—That the Court erred in not holding that the deed om the commissioner appointed by the Circuit Court of the North- n District of Georgia, made under the decree of that Court, was effective to convey to the Riverdale Cotton Mills the title to the id property situate in Alabama, upon which alleged title the relief anted in said decree complained of was granted.

Twelfth.—That as to the Huguley Manufacturing Company, the imant of the equity of redemption of said lands and premises uate in Alabama, no decree having been rendered against it in id suit of Robinson, Trustee, and it never having been given its y in Court for the redemption of said property as such owner of e equity of redemption, as required by law, it was error in said rcuit Court to perpetually enjoin it from maintaining its said it for redemption.

Thirteenth.—Said suit of the Alabama and Georgia Manufactur- g Company, and Huguley Manufacturing Company, corporations Alabama, pending in the State Court of Alabama, being a suit r the purpose not only of redemption of said mortgage property t also for an accounting for rents and profits from other persons, wit: the Galeton Cotton Mills and West Point Manufacturing mpany, who are charged with receiving the rents and profits om September 6, 1892, to November 1, 1898, prior to the creation the Riverdale Cotton Mills and prior to the conveyance set up the Riverdale Cotton Mills, by the commissioner of the said Cir- it Court, under decree of October 15th, 1898, it was error in said rcuit Court, at the suit of said Riverdale Cotton Mills, brought in own behalf and in its right as such purchaser alone, to perpetu- ly enjoin said complainants in said Alabama suit from the prose-

cution of said suit for accounting from said other defendants to said Alabama suit who are not complainants in said alleged ancillary bill.

Fourteenth.—That the said Circuit Court erred in not dismissing said alleged ancillary bill, it having been made to appear from the pleadings and proofs that said State Court of Alabama had first acquired jurisdiction of the *res*, and suit for accounting, it being the right of said Riverdale Cotton Mills to file in that court a certified copy of the proceedings had in the case of Robinson, Trustee, and have full faith and credit given to said proceedings as far as in law and equity they should receive.

Fifteenth.—That said Circuit Court erred in not holding that it never acquired in said suit of Robinson, Trustee, jurisdiction of the *res*, so far as the property in Alabama is concerned, and that having failed to decree a conveyance and cause a conveyance to be made of said property from the defendants in that suit, to the purchaser at the commissioner's sale, that it was too late by ancillary bill commenced two years after final decree of confirmation, and five years after the expiration of the charter of the Alabama and Georgia Manufacturing Company, of Georgia, party defendant to that suit, to cure said defects in title by injunction against the Alabama corporations having the title thereto, and for that reason it erred in granting said decree.

Wherefore, the said appellants pray that the decree of said Circuit Court of the United States for the Northern District of Georgia, rendered in said cause on the 29th day of September, 1902, be reversed, and that said alleged ancillary bill of the said Riverdale Cotton Mills be dismissed.

STATEMENT OF THE CASE.

The Hearing was on Bill and Answer.

The decree of September 29, 1902, rendered by the Circuit Court of the United States for the Northern District of Georgia, which was reversed by the Circuit Court of Appeals, and which reversal is the subject of complaint on the present petition for certiorari, was rendered on a hearing on *bill and answer*, with no evidence introduced on the part of the Riverdale Cotton Mills, the complainant in the so-called ancillary bill to sustain its allegations, or to overcome the denials of fact made in the answers of the Alabama corporations, which, if true, not only took all the equities out of the so-called ancillary bill, but left the Georgia Court without any jurisdiction to enjoin the suit brought by the Alabama corporations in the State Court of Alabama.

"The rule is, that if no replication be filed the answer will be "taken as true, and no evidence can be given by the complainant to "contradict anything which is therein well alleged."

Brown *vs.* Pierce, 7 Wall, 212.
Reynolds *vs.* Crawfordville Bank, 112 U. S. 409.

Even where there are allegations in the bill material to the complainant's rights to the relief sought, and the hearing is not on bill and answer, the rule is:

"If the answer neither admits nor denies the allegations of the "bill, they must be proved upon the final hearing."

Young *vs.* Grundy, 6 Cranch. 51.
Brown *vs.* Pierce, 7 Wall, 211.
Commonwealth, &c., *vs.* Cummings, 83 F. R. 767.

The case as stated in the petition for certiorari is the case as made by the allegations of the so-called ancillary bill of the Riverdale Cotton Mills, and totally ignores that all the material allegations of the same were not only wholly overcome by the denials thereof in the answers of the respondents, but that the complainant introduced no evidence whatever to support the allegations of the bill. This would have precluded the complainant's right to the relief even if replication had been filed, instead of the hearing having been on bill and answer.

The cases cited by petitioners, Fritz *vs.* Stover, 22 Wall, 769; Central, etc., *vs.* Connecticut, etc., 104 U. S. 54, to the effect that it is too late to raise the point in the Appellate Court, that no replication was filed, are only applicable to cases where complainants have made out their case by evidence, and the parties have gone to trial on the evidence, without the defendants raising the objection of want of replication. They are not applicable to a case tried on bill and answer. Nor does it relieve the complainant from the necessity of proving every material allegation of the bill, if the case is heard otherwise than on bill and answer.

Under this rule the fact must be taken as true:

(1) That the complainants in the suit in the State Court in Alabama were, as is averred in said suit and in the answers filed to the so-called ancillary bill, in truth and in fact, corporations chartered and organized under the laws of *Alabama,* having a principal place of business in *Alabama,* and that they are corporations, in law and in fact, entirely distinct from the corporations of similar names chartered under the laws of Georgia, and which were sued in the bill of Robinson, Trustee, solely as such *Georgia* corporations.

(2) That the lands and the cotton-mills, the subject-matter of the suit in the State Court of Alabama, were, in truth and in fact, situate in the State of *Alabama.*

(3) That the Alabama and Georgia Manufacturing Company was duly organized under the laws of *Alabama.*

(4) That the said Alabama and Georgia Manufacturing Company of Alabama did have a place of business in *Alabama.*

(5) That it was the *Alabama* corporation, and *not* the Georgia corporation of similar name, which owned, and *holds the title* to the lands in controversy in the Alabama suit.

(6) That there was no binding force against the Alabama Corporation, owning the lands in Alabama, of the order of sale, sale and confirmation, all made after the charter of the Georgia corporation had expired, and made in proceedings against the Georgia corporation and not against the Alabama corporation, and the sale having been made in Georgia, contrary to the statute in such case provided, without advertisement in Alabama or notice to the Alabama corporations.

It is true that the record discloses that there was a motion made by the Riverdale Cotton Mills, complainant in the so-called ancillary bill, to strike the answer of the Alabama & Georgia Manufacturing Company of Alabama, and the Huguley Manufacturing Company of Alabama, from the files. But no action of the court was taken

on said motion, and by proceeding to a hearing with the answer in and without evidence, the question of the alleged insufficiency of the answer was waived.

1 Foster's Fed. Prac., Sec. 152, p. 352.
Fulton Bank *vs.* Beach, 2 Paige (N. Y.), 307.
Glossington *vs.* Thwaites, 2 Russ. (Eng.), 458, 461.

The answer, however, was not evasive or insufficient. While all the facts set up went to the jurisdiction of the court, they were facts which, if true, precluded the decree rendered.

If the complainant had put the facts set up in the answer at issue, or had put in any proof in contradiction of the facts pleaded in the Alabama bill and in the answer to the so-called ancillary bill, the appellants herein were prepared to establish these facts by making the appropriate proof:

First.—To put in evidence the deed conveying the lands, etc., in controversy, to the Alabama Company, more particularly identified and located as "The Alabama and Georgia Manufacturing Company, *of the State* of Alabama, Chambers County," and to show that there has never been any change of title since.

Second.—To show, by ancient maps of survey and field notes (made in 1829-1834), certified by the Commissioner of the United States Government Land Office at Washington, D. C., and by the Secretary of State of Alabama, and by competent civil engineers construing same, that the *entire* property was, as is averred by them, situate wholly in *Alabama*.

Third.—To *confirm*, by the records of said Alabama Company, made at the time of organization in 1866, the evidence that the lands in controversy were acquired, the mill main buildings and other factory buildings were constructed, the machinery installed, and the entire factory plant made a going concern, during the year 1866.

And in that connection, to show, by the same documentary evidence from the books of the said Alabama company, entered of record at the time, and otherwise, the following other material facts: That said *Alabama* company had been regularly organized after corporate meetings duly called and held in *Alabama;* that it established its fixed place of business in *Alabama*, at the place designated in its charter, and it, and the Huguley Manufacturing Company of Alabama, maintained said home office, with an agent thereat, uninterruptedly throughout up to 1892; that at said preliminary meetings called and held in February and March, 1866, the said incorporators and their associates adopted a Constitution and By-Laws, and elected officers; that they promptly opened books of subscription to the capital stock of said Company, and the full amount of said capital stock was there and then subscribed and a large propor-

tion *paid in*, and the fact of said subscriptions and payments thereunder were duly entered of record upon the records of said Alabama Company; and that, as the initial step preliminary to said formal organization and inauguration of said manufacturing enterprise, the lands and riparian rights in controversy, including certain improvements thereon, were acquired and title thereto taken in said *Alabama* Company—all of said proceedings having transpired and been formally and finally concluded *on and before the 20th day of March, 1866, antedating even the granting of the charter to the Georgia Company.*

Fourth.—And by the same documentary record evidence, and as is in large part indicated by the record now before the Court, said complainants were and are prepared to prove that the lands, and manufacturing plant, mills, machinery, etc., respectively, were not only acquired and constructed at the time and in the manner stated, but all were *paid for* with the money so subscribed and paid into the treasury of the said *Alabama* Company, pursuant to said subscriptions by *its* shareholders to *its* capital stock, and that too, it may be observed, (a) *fifteen years before* any mention, in the record, of the first meeting, *in Georgia*, of stockholders of any corporation styled as "The Alabama and Georgia Manufacturing Company," and (b) *five years before* there was any thought of opening or maintaining, for convenience, any second office at West Point, Ga.

Fifth.—As complainants were prepared to prove, and as is, indeed, disclosed by the record, the scheme originally contemplated, to wit, of utilizing the water power of the Chattahoochee river, by the construction by the Georgia corporation of dams and the erection and establishment of an independent manufacturing plant on the *Eastern* or *Georgia* side, to which territorial jurisdiction said projected Company *was definitely restricted and confined* by the express limitations under Sec. VI, of its charter, was afterwards wholly abandoned, not one acre of land having been acquired, and not one building erected by said *Georgia* corporation, as such.

And lastly, to show that The Alabama and Georgia Manufacturing Company (the *Alabama* corporation) was never made nor served as a party to any litigation under the proceedings in the Troup county, Georgia, court, instituted in 1888, and referred to in the record of the Robinson suit, but that it was the *Georgia* company of the same name, *only*, which was so made or joined as a party thereto, under the so-called "stockholders' bill" of "A. T. Dallis *et al. vs.* W. H. Huguley & Co."

As the case was, however, heard on bill and answer, each one of these substantive defenses, well pleaded in the answer, must be taken as *true*, and can not be taken as modified or weakened by reference to pleadings of other corporations alleged by the complainant (petitioner) to be the same corporations, or even by reference to

pleadings of the same corporation in other courts in which the same issues were not in the mind of the pleader, and which are or may be of easy explanation if the case were open to trial on the evidence The truth of the allegations of fact in the answer to the alleged ancillary bill can not be challenged on this hearing by the complainant.

The cases cited by Solicitors for petitioner, to the effect that new facts set up in the answer in avoidance and not responsive to the bill, must be supported by evidence on the part of the defense, see:

Clarke *vs.* White, 12 Pet. 178-190;
Seltz *vs.* Mitchell, 94 U. S. 580;
Farley *vs.* Kittson, 120 U. S. 303, 317;

relate to cases heard on the *evidence* and not to a case heard on bill and answer.

The rule on a hearing on bill and answer, as stated by Mr. Justice Gray for the court, is:

"All new facts alleged in the answer, are deemed admitted, as "upon demurrer to an answer at law."
In re Sanford Fork, etc., Company, 160 U. S. 247-257.

THE FOUR CORPORATIONS.

There are four corporations, on the identity and mutual relations of which the case turned:

(a) *"The Alabama & Georgia Manufacturing Company,"* under which name certain individuals were incorporated *by the act of the Legislature of Alabama* of February 7, 1866, with principal office in Chambers County, Alabama, and authorized to erect and conduct certain cotton mills on the Alabama side of the Chattahoochee river.

See charter, Record, p. 494.

(b) *"The Alabama & Georgia Manufacturing Company,"* under which name certain individuals were incorporated by *act* of *the Legislature of Georgia* of March 21, 1866, with principal offices at Columbus and La Grange, Georgia, and authorized to erect and conduct certain cotton mills on the Georgia side of the Chattahoochee river.

See charter, Record, p. 529.

(c) *"The Huguley Manufacturing Company,"* under which name certain individuals were incorporated February 27, 1890, *under general laws of the State of Alabama,* with principal office in Chambers County, Alabama.

See charter, Record, p. 531-535.

(d) *"The Huguley Manufacturing Company,"* under which name certain individuals were incorporated *under general laws of the State of Georgia,* with principal office at West Point, Georgia.

A copy of the charter of the last mentioned corporation is not in the Record. But the fact of the incorporation of a company in that name in Georgia is specifically charged in the original bill filed by J. J. Robinson, trustee, against it in the Circuit Court of the United States for the Northern District of Georgia. (Record, p. 1.) And the answer of that corporation filed by its solicitor, N. J. Hammond, specifically admits that fact. (Record, p. 14.) Moreover the deposition of N. J. Hammond in the Robinson suit states, "I advised in the procurement of the charter of the Huguley Manufacturing Company, and have been its attorney in this and other matters in Georgia since." (Record, p. 26.)

The fact that a corporation by that name was created and organized under the laws of Georgia is also specifically averred in the so-called ancillary bill of the Riverdale Cotton Mills, (Record, p. 473,) and in its petition for certiorari to this court. It is true that in the answer of the Alabama corporations to the so-called ancillary bill it is stated *on information* that the Huguley Manufacturing Company was not incorporated in Georgia. It is admitted now that this information was erroneous. But it is distinctly averred in the said answer of the Alabama corporations to the so-called ancillary bill, (Paragraph ninth, Record, p. 508,) that neither of said Alabama corporations were ever parties to the Robinson suit.

Since the Alabama corporations were cut off from offering evidence, by the decree on the bill and answer, this allegation of the answer must be taken as true. If they had been allowed to offer evidence it would have been shown that the corporation which was a party to the Robinson suit under the name of the Huguley Manufacturing Company, was the corporation chartered under that name on the petition of N. J. Hammond as attorney for certain individuals, by the Superior Court of Troup County, Georgia, on April 29, 1890, as shown by the records of that court. That the incorporators were not all the same as those who had been incorporated under the same name on February 27, 1890, under the laws of Alabama, (Record, p. 532,) and that the capital stock of the two respective corporations were different, their designated places of business were different, and their corporate powers and purposes not the same. Since we were cut off from making this proof, by a decree on bill and answer, the averment in the answer that the Huguley Manufacturing Company, the Alabama corporation, was not a party to the Robinson suit must be accepted as true. And this makes it clear on the record, as it stands, that there were four separate and distinct corporations; two created under the laws of Alabama, and two created under the laws of Georgia.

THE ROBINSON BILL.

J. J. Robinson, Trustee, of Alabama,

versus

The Alabama and Georgia Manufacturing Company of Georgia, and the Huguley Manufacturing Company of Georgia, and William T. Huguley, Trustee, of Georgia.

Bill in Circuit Court of the United States for the Northern District of Georgia, Filed January 21, 1891.

On January 21, 1891, in the United States Circuit Court for the Northern District of Georgia, J. J. Robinson, a citizen of *Alabama*, as one of the trustees for mortgage bondholders, filed his bill against the mortgagor, the Alabama and Georgia Manufacturing Company, averred to be a *corporation* created under the laws of *Georgia*, and a citizen of the State of *Georgia*, and resident of the Northern District of *Georgia*, and against the Huguley Manufacturing Company, the alleged purchaser of the property subject to the mortgage, averred to be a *corporation* created under the laws of *Georgia*, and a citizen of Georgia, resident of said district, and against W. T. Huguley, the other trustee for the mortgage bondholders, charged with having conflicting interests, and averred to be a citizen of *Georgia*, resident in said district.

(Record, p. 1.)

The property, covered by the mortgage or deed of trust, to secure $65,000 of bonds, is therein described as consisting of the following property in Harris County, Georgia:

(a) "All of a large island in the Chattahoochee river, designated "as Island No. 6, containing one hundred and forty-three acres "(143), more or less. Also Island No. 9, containing seven (7) "acres, more or less. Also a small island between Islands No. 6 and "No. 9, upon which the east end of the factory building rests, con- "taining four (4) acres, more or less. All of said three above de- "scribed islands being in the 20th district of *Harris County, Georgia.*"

And the following property in *Chambers County, Alabama*, to wit:

(b) "Also a tract or parcel of land lying on the west side of the

"Chattahoochee river, *opposite* the above described islands, bounded "on the east by said river, beginning at a point on the west bank of "said river, nearly opposite the center of the seven (7) acre island, "at a black gum, at or near a place known as Sell's Corner; thence "in a straight line to a point where the land owned in 1868 by Mrs. "Freeman, Job Ross, and James Campbell joined, known as the Ross "and Freeman corner, to a pine stake; thence in a line to a branch "near said stake; thence in a line down said branch to said river; "thence down the western bank of said river to the beginning point, "containing sixty-five and 23-100 (65.23) acres, more or less, *lying "and being in Chambers County, State of Alabama,* and being a "part of section twenty-eight and section twenty-nine (28 and 29) "township twenty-one (21), range twenty-nine (29), as well as a "forty (40) foot right of way from the factory building to the pub- "lic road leading from West Point, Georgia, to Berlin, Ala., at any "point where the factory company may locate it, *including all tene- "ments and improvements, including the cotton mill and machinery "therein or thereto belonging, and all water privileges and riparian "rights now or hereafter owned or enjoyed by the said party of the "first part."*

(Record, pp. 5, 6.)

The prayers of the bill were:

1. That an account be taken as to what was due on the bonds.
2. For foreclosure and sale.
3. That a receiver of the property be appointed.
4. For injunction against defendants from interfering with the property.
5. For general relief and *subpœna.*

(Record, p. 3.)

But no receiver was ever appointed and no injunction was ever granted.

(Record, p. 8.)

There was no service of *subpœna* on the bill. (Record, p. 488.) But service was acknowledged and appearance entered by Counsel for the two defendants named and sued, to wit: the Alabama and Georgia Manufacturing Company (the Georgia corporation), the Huguley Manufacturing Company (also alleged to be a corporation of Georgia), and W. T. Huguley (*personally*), claimed to be a citizen of Georgia.

(Record, p. 8-9.)

Demurrers and answer were also in due course filed by the said defendant Georgia corporations.

(Record, p. 9-11 and 14-22.)

The said answer of the Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, (the Georgia corporations,) was filed by N. J. Hammond as solicitor, and in paragraph numbered (1) it is distinctly averred that "The citizenship and residences of all the parties named in said bill are admitted as alleged."

It further appears that the deposition of N. J. Hammond was taken in that cause January 20, 1892, and he there testified: "I advised in the procurement of the charter of the Huguley Manufacturing Company, and have been its attorney in this and other matters in Georgia since."

(Record, p. 26.)

It further appears that the said Huguley Manufacturing Company (the Georgia corporation) set up in its answer a claim that it had bought the equity of redemption owned by the said Alabama and Georgia Manufacturing Company (the Georgia corporations) in said mortgaged premises in January, 1890, at a sale made in Harris County, Georgia, by a receiver under a decree of the Superior Court of Troup County, Georgia

(Record, pp. 15-7.)

It does not appear from anything in the Robinson suit, that the Alabama and Georgia Manufacturing Company (the Alabama corporation) was ever a party to the alleged Troup County, Georgia, proceeding, or that any proceeding was had therein which could have divested it of its title and ownership to the mills and property situate in Alabama, and on that proposition the Alabama and Georgia Manufacturing Company (the Alabama corporation) has never had its day in court.

Nevertheless the Alabama and Georgia Manufacturing Company, and the Huguley Manufacturing Company (the Georgia corporations) did set up, in answer to the Robinson bill, their own alleged claim of right, and contested said proceedings for several years until they finally lost.

It is unnecessary to go into all the details of the proceedings had under the Robinson bill. It is sufficient to say that the first foreclosure and sale had under the Robinson bill was held by the Circuit Court of Appeals to be null and void, and the same was set aside.

Alabama & Ga. M'f'g Co. *vs.* Robinson, 6 C. C. A., p. 79.

Second Decree for Foreclosure March 30, 1895.

After other proceedings had, the Circuit Court for the Northern District of Georgia, on March 30, 1895, rendered a second decree

foreclosing the mortgage for part of the mortgage debt on the rights and properties of the said defendant, the Alabama and Georgia Manufacturing Company (the Georgia corporation) and against the right of any person claiming under *it* since the date of the mortgage. The decree directed a sale of the factory and other property situate in Alabama as well as the islands alleged to be in Georgia, after an advertisement in the Georgia papers only, and directed the said sale to be made by its commissioner at Hamilton, Harris County, Georgia, on June 4, 1895.

(Record, p. 356-362.)

The sale was not made at the time appointed, but on March 10, 1896, the court amended its decree by ordering the sale to be made on May 5, 1896, after advertisement, as in said decree of March 30, 1895, provided.

(Record, p. 383.)

The charter of the Alabama and Georgia Manufacturing Company Expires Before the Sale.

In the meantime and prior to the sale, the charter of the Alabama and Georgia Manufacturing Company (the Georgia corporation) expired by limitation.

A copy of the charter granted by the General Assembly of Georgia on March 21, 1866, is in the Record, p. 529. It is also published in the Acts of the General Assembly of Georgia for 1866. This Georgia corporation became dissolved by operation of law, and became legally dead, on March 21, 1896.

The Act of the General Assembly of Georgia, of January 1, 1863, carried into the Code of 1867, as Section 1677, and now found in Code of 1895, as Section 1851, provides: "Should any charter granted in future by the General Assembly to a private corporation be silent as to its continuance, *such charter shall expire at the end of thirty years from the date of its grant.*"

West End, etc., R. R. Co. *vs.* Atlanta St. R. R., 49 Ga. 151.
Central R. R. *vs.* State, 54 Ga. 404.

"By an existing law (Georgia Code, Sec. 1684) every corporation "is dissolved by expiration of its charter. As the Constitution de- "clares that laws general in their nature shall have uniform opera- "tion throughout the State, the Western & Atlantic R. R. Co. was "dissolved when its charter expired."

Logan *vs.* W. & A. R. R. Co., 87 Ga. 533.

Notwithstanding this fact, the complainant went on with his proceedings as if he were not dealing with a dead corporation, and paid no attention to it.

The Sale of May 6, 1896.

In pursuance of the terms of the decree of March 30, 1895, and order of March 10, 1896, the commissioner sold on May 6, 1896, at Hamilton, Harris County, Georgia, all the mortgaged property, including the factory and property admitted to be situate in Chambers County, Alabama. At this sale the property was bid in by one L. Lanier, then claiming to represent a majority of the bondholders and to be acting solely for and on behalf of the holders of the bonds of the Alabama and Georgia Manufacturing Company (Record, p. 390) for the sum of $66,000, and the purchaser to assume whatever liability might be adjudged in favor of the Huguley Manufacturing Company of Georgia on its claim for back rents and profits claimed by it.

This sale was confirmed by the decree of June 25, 1896, which provided that:

"It is ordered, adjudged and decreed that said sale be, and the "same is hereby, confirmed in all respects, and that said Samuel C. "Dunlap, as such commissioner, be and he is hereby authorized and "directed to convey to said purchasers named, all and singular the "property and the property rights of every description described in "said decree, *upon the purchasers complying with the terms of "sale.*"

(Record, p. 395.)

It does not appear from the record in the Robinson case that the conditions of the sale were ever complied with by the purchaser.

Over two years after the bid, to wit, on September 22, 1898, Lanier filed in court a petition in the cause in which he stated that he had not been able to control the bonds, and prayed further time in which to pay for the property, and that he be allowed to pay for the property in cash, and take a deed to it himself or to such person as he might direct.

(Record, p. 440.)

This petition was granted by the court on October 15, 1898. The said Lanier was given 40 days within which to make payment in cash, and a direction made that when the clerk should certify to the fact of payment of the money into court, that the *commissioner* should make a deed to the purchaser for the property.

(Record, p. 445-446.)

There never was any decree in the Robinson suit directing the *mortgagor* or *trustees under the mortgage to make a deed to the purchaser and they never did.* The only indication in the record that the commissioner ever made such a deed to the purchaser, is the allegation made by the Riverdale Cotton Mills in its so-called

ancillary bill, in which it alleges that in pursuance of the order of October 15, 1898, "a deed was executed by direction of the said L. Lanier, by the commissioner of said court appointed to conduct the said sale, conveying the title to all the said property to your orator, and your orator paid all the purchase money therefor into court, as required by order thereof."

(Record, p. 477.)

In that state of the record, on December 2, 1898, the said, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (the *Georgia* corporations) appealed from the decrees of sale, and of comfirmation, to the Fifth Circuit Court of Appeals, and those decrees were affirmed.

Huguley Mfg. Co. *vs.* Galeton Cotton Mills, 94 F. R. 269 (decided May 16, 1899).

An effort was then made to take the case up under application for *certiorari*, but failed.

Huguley Mfg. Co. *vs.* Galeton Cotton Mills, 175 U. S., 726.

Finally, on May 16, 1899, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (the *Georgia* corporations), and William T. Huguley, trustee, appealed from the decree of the Circuit Court of Appeals, but the appeal was dismissed by the United States Supreme Court for want of jurisdiction.

Huguley Mfg. Co. vs. Galeton Cotton Mills, 184 U. S. 290 (decided February 24, 1902).

THE ALABAMA CASE.

The Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, Corporations Created and Organized Under the Laws of Alabama,

versus

The West Point Manufacturing Company, the Galeton Cotton Mills and the Riverdale Cotton Mills, Corporations Under the Laws of Alabama, and J. J. Robinson, Trustee, a Citizen of Alabama, and William T. Huguley, Trustee, a Citizen of New York.

In the First District of the Northeastern Chancery Division of State of Alabama. Filed May 2, 1901.

The bill sets forth the charter of "The Alabama and Georgia Manufacturing Company," by the Legislature of Alabama, under Act of February 7, 1866 (Record, p. 486), and attaches copy of the charter.

(Record, p. 494.)

The bill recites that this company, to wit, "The Alabama and Georgia Manufacturing Company of *Alabama," was seized and possessed of certain property,* the same described in the mortgage to Robinson, Huguley and Yancey, trustees, *supra,* except that all the property is charged to lie in Alabama.

(Record, pp. 486-8.)

It avers the execution, by the said the Alabama and Georgia Manufacturing Company of Alabama, of the mortgage, in January, 1884, to Robinson *et al.,* trustees.

(Record, p. 487.)

It sets forth the proceedings had under the bill by Robinson, trustee, against the Alabama and Georgia Manufacturing Company, the *Georgia* corporation, created by Act of the Legislature of Georgia, of March 21, 1866 (487-8), and charges that the Alabama and Georgia Manufacturing Company, the *Alabama* corporation, was not a party to the suit; and further charges that W. H. Huguley, president of said corporation, a citizen and resident

of *Chambers County, Alabama,* was never served with either notice of said alleged default of interest, or notice of said suit of foreclosure.

(Record, p. 488.)

It charges that the property was not advertised in the State of Alabama, nor was any sale, or pretense of sale, conducted in said State.

(Record, p. 488.)

It charges that the Galeton Cotton Mills, a corporation organized only under the laws of *Alabama* (attaching charter, Record, pp. 495-7), which went into possession of the property on September 6, 1892, under the first sale made by the commissioner of the Circuit Court of the Northern District of Georgia, which was declared void, remained in possession and operated the plant up to November, 1898, when the Riverdale Cotton Mills went into possession, claiming under the alleged deed from the commissioner of the Circuit Court of the Northern District of Georgia, under decree of October 15, 1898.

(Record, p. 489.)

It charges that the West Point Manufacturing Company, a corporation of Alabama, was the *principal,* practically the sole stockholder in both the Galeton Cotton Mills, of Alabama, and the Riverdale Cotton Mills, of Alabama, and as such has received all the rents and profits derived from the operation of said property in controversy, from September 6, 1892, to the time of filing the bill, May 2, 1901.

(Record, p. 489.)

It charges that these rents and profits, from September 6, 1892, to May 6, 1896 (the period covered by the alleged accounting had in the Georgia proceedings), amounted to $228,000, and from May 6, 1896, to May 2, 1901, to over $300,000. A sum largely in excess of the mortgage debt.

(Record, pp. 489-490.)

It charges that the entire factory plant and all the lands appurtenant, described in the mortgage, including even the one island, artificially formed, and not used in connection with the factory, are situate in *Alabama.*

(Record, pp. 490-491.)

It averred that all of the judicial proceedings in Georgia are absolutely null and void in so far as it concerns or affects the *title* of the Alabama and Georgia Manufacturing Company (the *Alabama* corporation), and of the Huguley Manufacturing Company (the Alabama corporation), to the lands and property in Alabama.
(Record, p. 491.)

It charges that the equity of redemption in said Alabama property has not been cut off.
(Record, pp. 492-3.)

It prays redemption of the said mortgaged property, and an accounting for the rents and profits, the defendants being given proper credits for their just claims.
(Record, pp. 492-3.)

Answer of Riverdale Mills et al. Filed in Alabama Suit.

To this bill the West Point Manufacturing Company, the Galeton Cotton Mills, and the Riverdale Cotton Mill filed their answer (Record, pp. 510-527), and the case, while pending argument at Opelika, Alabama, and being held for decree in vacation, was afterwards stopped by the proceedings for injunction on the alleged *ancillary* bill in Georgia, hereinafter described.

THE SO-CALLED ANCILLARY BILL IN GEORGIA

The Riverdale Cotton Mills of Georgia

versus

The Alabama and Georgia Manufacturing Company, The Huguley Manufacturing Company, (Averred to be Corporations Under the Laws of Georgia), J. M. Chilton, of Montgomery, Alabama, and Welles, Bennett & Welles, of Washington, D. C., Solicitors, Etc.

In the Circuit Court of the United States, for the Northern District of Georgia.

On June 10, 1901, a bill was filed in the Circuit Court of the United States for the Northern District of Georgia, by the Riverdale Cotton Mills, averring itself to be a corporation created under the laws of *Georgia,* against the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, averred to be corporations created under the laws of *Georgia,* and against their solicitors, J. M. Chilton, of Montgomery, Alabama, and Welles, Bennett & Welles, of Washington, D. C., which bill, it charges, is *"ancillary"* to the original bill filed by Robinson, trustee.

(Record, 473, *et seq.*)

Complainant charges that it received a deed from the *commissioner* of the Circuit Court of the United States for the Northern District of Georgia, for said lands, etc., in controversy, and paid the purchase money, under the aforesaid decrees of sale of March 30, 1895, March 10, 1896, and October 15, 1898, respectively.

(Record, 477.)

The bill is sought to be maintained solely in the right of such purchaser, and as dependent upon the original Robinson bill, for jurisdiction.

(Record, 473, *et seq.*)

The bill recites the proceedings had under the original Robinson bill in Georgia, and recites the filing of the bill (for redemption) in Alabama, by the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, claiming to be both corporations organized under the laws of *Alabama* (Record, pp. 473-486), and attaches a copy of same, with exhibits.

(Record, pp. 486, 495, 494, 500.)

It avers that each and all claims for relief, set up by complainants in the Alabama bill, were set up, or could have been set up or adjudicated, in the proceeding under the Robinson bill; that the Alabama bill seeks to again raise and have adjudicated the same matters and issues already adjudicated in the Robinson bill; that the Alabama bill is an attack on the decrees in the Robinson suit.

(Record, p. 479.)

It denies that the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, the complainants in the Alabama suit, were ever organized under the laws of Alabama, and avers that the only office or place of business ever had or maintained by either of them was in West Point, Georgia, and that the only property either of them ever owned, to wit, the property in the mortgage, was situate partly in Georgia and partly in Alabama, as therein described, and that they owned this as corporations organized under the laws of *Georgia.* (Record, p. 473.) It avers that the same Counsel represented the defendants in the Robinson bill that represent the complainants in the Alabama bill, and said Counsel are made defendants for purpose of *injunction* only.

(Record, pp. 480-1.)

Discovery and answer under oath is waived.

(Record, p. 481.)

The prayers are:

1. Temporary and perpetual injunction against defendants, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company (corporations of Alabama), and their attorneys or solicitors, restraining the prosecution of the Alabama suit or any similar suit.

(Record, p. 481.)

2. For *subpœna* directed to "The Alabama and Georgia Manufacturing Company," "The Huguley Manufacturing Company," and to J. M. Chilton and Welles, Bennett & Welles, their solicitors.

(Record, p. 482.)

Restraining Order.

On June 10, 1901, Judge Newman made an order allowing the bill to be filed. He also issued a *rule nisi,* requiring the defendants to show cause before him at Atlanta, Georgia, why injunction should not issue as prayed, and restraining the defendants from further proceedings in the Alabama suit in the meantime. He further directed that service of the order and of *subpœna* be made upon the defendants *wherever found.*

(Record, p. 500.)

No Service.

No service was made or attempted to be made on the Alabama and Georgia Manufacturing Company of Alabama, or on the Huguley Manufacturing Company of Alabama, but the Counsel of record for said companies in the Alabama suit, who were *individually* made parties defendant, acknowledged service for themselves individually.

The marshal also returned that he had served subpœnas on W. H. Huguley and W. T. Huguley (as individuals) at West Point, Georgia.

The Answer of the Alabama Corporations to the Alleged Ancillary Bill.

On June 21, 1901, the defendants indirectly, but actually, restrained, to wit, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, averring themselves to be corporations created and organized under the laws of *Alabama,* and suing as such corporations of Alabama, and their solicitors, filed their answer, to this rule to show cause and alleged *ancillary* bill.

1. The answer denies that complainants' bill is *ancillary* to the Robinson bill (Record, p. 506). It points out that on the face of the bill, it is averred that the complainant and the defendants, against whom relief is asked, are all citizens of *Georgia,* and that the court is without jurisdiction to entertain it.

(Record, p. 506.)

2. It squarely takes issue on the averments of the bill that the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company were not regularly chartered and organized under the laws of *Alabama,* and averred the *contrary* to be true.

(Record, p. 505.)

It sets out the fact of the charter of the Alabama and Georgia Manufacturing Company, by Act of the Legislature of *Alabama,* of February 7, 1866, and avers that the copy of the charter in the record is a correct copy.

(Record, pp. 508, 494.)

It sets out the fact of a charter of another corporation of the same name, by Act of the Legislature of *Georgia,* on March 21, 1866, a copy of which charter is attached (Record, p. 529) and points out that the two charters, while granted in part to the same persons, created separate and distinct corporations, *with no power of merger,* and each limited to the respective States creating them, for the acquisition of real property and for its operations.

(Record, pp. 505, 508, 529, 532.)

It also sets out a copy of the charter, granted the 27th day of February, 1890, in Alabama, to the members of the firm of W. H. Huguley & Co., namely: W. H. Huguley, W. T. Huguley and J. H. Nolan, and their associates, J. M. Chilton and T. H. Whitaker, as incorporators, to the corporation entitled "The Huguley Manufacturing Company," and sets out in full the facts and ceremonies attending the organization proceedings had and observed in Alabama and in conformity with the laws of Alabama, pursuant thereto; setting out, among other proceedings, the subscriptions to its capital stock and the *undertakings* of the subscribers thereto—all showing, on face of record, that the organization of said Alabama Company of this name, *was* duly and regularly perfected as such *independent Alabama* corporation, and with its fixed principal place of business and home office established, according to the terms of said charter, *"in Chambers County, Alabama, near the factory, lately known as 'The Alabama and Georgia Mills.'"*

(Record, pp. 505-6, 507-8, 531-6.

Said Charter, in Alabama, to the Huguley Manufacturing Company of *Alabama* made and contained *no* provision whatever which gave it the privilege or power to *merge or consolidate* itself with any other corporation, by whatever State such other might be created, and, as matter of fact and law, there was not, and could not have been, any such amalgamation or consolidation with any other corporation.

It avers that the Alabama and Georgia Manufacturing Company, and the Huguley Manufacturing Company, the *Alabama* corporations complainant, in the suit in Alabama, were never parties to the Robinson suit.

(Record, p. 508.)

It denies the jurisdiction of the Circuit Court of the United States for the Northern District of Georgia, over the persons of the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, corporations of *Alabama,* at the suit of the Riverdale Cotton Mills.

(Record, p. 508.)

It denies that the decree of foreclosure and sale, made under the Robinson bill, is conclusive upon the said Alabama and Georgia Manufacturing Company of *Alabama,* and the Huguley Manuturing Company of *Alabama,* so far as the property in Alabama is concerned, both by reason of the citizenship of the parties and the fact that the more valuable part, if not all, of the property decreed to be sold, was situate in the State of *Alabama.*

(Record, p. 506.)

It denies that the property, described in the mortgage, as being partly in Georgia and Alabama, forms part of an *indivisible* whole, but avers the *contrary*, and it is further averred that *all* of the property is in fact situate in *Alabama*, but if not all, that the only part of the property in Georgia—Island No. 6—is detached and isolated, and has never been used except for agricultural purposes.

(Record, pp. 507-8.)

It sets up that the charter of the Alabama and Georgia Manufacturing Company (the later *Georgia* corporation), expired by limitation of its terms on March 21, 1896. That the Circuit Court was without jurisdiction to make the sale in May, 1896, and confirmation, and the commissioner was without jurisdiction to make the deed, in 1898, to the Riverdale Cotton Mills, by reason of that fact.

(Record, p. 507.)

It denies the jurisdiction of the Circuit Court for the Northern District of Georgia, in this suit, to restrain the proceedings in the *State* Court of *Alabama*, its exercise being prohibited by Section 720, Revised Statutes of the United States.

(Record, p. 506.)

It is averred that the complainant had already pleaded to the Alabama suit and that the cause there had been submitted on demurrers for decision, before the proceedings had been instituted on this alleged *ancillary* suit.

(Record, pp. 506-7, 508, 510.)

The answer of defendants avers that the proceedings in Alabama were instituted in good faith; that there was no intention on their part to proceed in contempt of the Circuit Court for the Northern District of Georgia (Record, p. 509), and points out that the proceedings in Georgia and in Alabama were essentially different, the one having been for *foreclosure*, the other for *redemption* of the Alabama property, *the title to which*, it was averred, *had never been divested out of the Alabama corporation*, by the foreclosure and sale in Georgia against the *Georgia* corporation, nor by the deed of the *Commissioner* in Georgia.

(Record, pp. 508, 505, 486; Op. C. S. A. 556; 127 Fed 501.)

The prayers of the answer were for dismissal of the said bill for want of jurisdiction of the persons and subject-matter of said proceedings."

(Record, p. 509.)

Temporary Injunction.

On October 8, 1901, Judge Newman granted an injunction *pendente lite.*

(Record, pp. 535-540.)

A petition of the defendants for a writ of prohibition was denied by the Supreme Court of the United States, as premature.

In re Huguley Mfg. Co., 148 U. S. 297 (decided February 24, 1902).

Subsequent Proceedings.

The complainant filed no *replication* to the answer of the defendants.

No decree *pro confesso* was taken against any of the defendants, or exceptions filed to the sufficiency of defendants' answer.

A motion was made by the Riverdale Cotton Mills, to strike the answer of defendants, but the same was abandoned, and no action of the Court was had thereon.

The answer was not, however, evasive or insufficient. While all the facts set up went to the jurisdiction of the court, they were facts which, if true, precluded the decree rendered.

No Evidence Taken or Offered to Support the Allegations of the So-called Ancillary Bill.

No evidence whatever was taken by complainant to support the allegations of the alleged *ancillary* bill, put in issue by respondents' answer, other than the record of the proceedings in the original Robinson suit, which proceedings in no way covered the issues made by defendants' answer as to the jurisdiction of the court over the persons and subject-matter of the alleged *ancillary* suit; nor as to the want of identity of the defendants in the two proceedings, nor as to the facts averred in the answer which, if true, made the questions involved in the cases different.

The case was tried on bill and answer.

The Final Decree of September 29, 1902, on the So-called Ancillary Bill.

On September 29, 1902, the Circuit Court rendered a final decree, perpetually enjoining the defendants, and all other persons claiming under them, from further prosecution of the Alabama suit, and from the commencement or prosecution of any suit against the complainant, the Riverdale Cotton Mills, or against any other person or corporation by or through whom the Riverdale Cotton Mills derived the said property described, as to any matters involved and adjudicated or which could have been adjudicated in the said cause of Robinson, trustee, and perpetually enjoining the defendants from interfering with the possession of the Riverdale Cotton Mills.

(Record, p. 539.)

From this final decree the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, corporations of Alabama, and complainants in the Alabama suit enjoined, appealed to the Circuit Court of Appeals for the Fifth Circuit.

The Reversal of the Decree of the Lower Court by the Circuit Court of Appeals.

On January 12, 1904, the Circuit Court of Appeals reversed the decree of the Circuit Court for the Northern District of Georgia, rendered September 29, 1902, and directed the dismissal of the so-called ancillary bill for want of jurisdiction, without prejudice to the right of the appellee to defend the suit against it in the State Court, or otherwise maintain in any court of competent jurisdiction, any rights which it may have against the appellants.

In reaching that conclusion, the Circuit Court of Appeals, did not find it necessary to predicate its ruling upon but two out of the many points raised by the assignment of errors. It held:

(a) "As the appellants (the Alabama corporations) could not have been parties defendant to the Robinson bill without ousting the jurisdiction of the court, and that court could not pass a decree against their property rights in Alabama, and (b) did not make any effectual decree conveying title out of them (if it could have done so), and they are not assignees or privy in estate to the defendants in that bill, and claim an independent source of title, the cases of French *vs.* Hay, 22 Wallace 250; Dietsch *vs.* Huidekoper, 103 U. S. 494, and Root *vs.* Woolworth, 150 U. S. 401, on which appellee relies, do not apply here." (Record, p. 560.)

The Dissenting Opinion.

It is true that one of the Judges of the Circuit Court of Appeals dissented from the majority in the case at bar. He bases his views, it would appear, largely upon the idea that it was the duty of the Alabama corporations to have asserted their rights in the Robinson suit, and that a failure to disclose and assert them there was a fraud upon the court. He says: "When we really thought we were passing upon substantial issues and rights, and when honesty and fair dealing required the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company and their Counsel —unless they also were tricked—to make full disclosure of their citizenship and status as litigants." (Record, p. 563.)

We submit that if any imposition was practiced, or attempted to be practiced, on the jurisdiction of the Court, it was not done either by the Alabama corporations or by the Georgia corporations, but by Robinson, the trustee and plaintiff in the Robinson suit.

Robinson Knew of the Existence and Rights of the Alabama Corporations.

Robinson was a citizen and resident of the State of Alabama (Record, p. 1). He for a long time had been a resident of Chambers County, Alabama, where the mills were situate. He was Judge of Probate of that county, in 1884, 1890 and 1892, as shown by the record (Record, pp. 525, 533, 496). Robinson actually granted the charter of the Huguley Manufacturing Company of Alabama, and as such Ordinary certified to the organization of the company and to the contract by which the title to a part of the very property in Alabama in controversy, was conveyed to said Huguley Manufacturing Company of Alabama in 1890. (Record, p. 534.)

He at least was on constructive notice also of the charter of the Alabama and Georgia Manufacturing Company, the Alabama corporation, which was chartered by the General Assembly of Alabama, by Act of February 6, 1866. (Record, p. 494.)

In view of the fact that the mills were constructed by this company in Chambers County, Alabama, his connection with the case, and his prominent position as an official of the county, it is impossible to doubt, that he knew actually of the existence and rights of that company, as certainly as he is shown by the evidence to have had actual knowledge of the existence and rights of the Huguley Manufacturing Company of Alabama.

Being a citizen of Alabama, he knew or must have been advised by Counsel, that he could not sue the Alabama corporations either in the Federal Court in Alabama or in the Federal Court in Georgia. It was an extraordinary thing for him to leave his home county in Alabama, where all the mills and improved property were

situate, and to file in the Federal Court in Georgia a bill to foreclose a mortgage on Alabama property—and that too on a rush suit brought immediately upon default of an interest installment on the bonds, occasioned by the delay of a check sent through the mails and the intervening of a bank holiday. (Record, pp. 19-21.)

Robinson's extraordinary course can only be accounted for upon the ground, that he was acting upon the advice of Counsel who then had the same erroneous view of the law that his present Counsel are contending for *now*, viz.: that there was an identity in fact and law between the respective corporations created under the laws of Georgia and the corporations of the same name created under the laws of Alabama, and that he was at liberty to utterly ignore the existence and rights of the Alabama corporations. With full knowledge of the facts he elected to sue the Georgia corporations, in a court in which he could not as a citizen of Alabama sue the Alabama corporations without ousting the jurisdiction of the court. And he is entitled to the fruits of his victory over the Georgia corporations only.

In justice to the memory of Honorable N. J. Hammond, now deceased, who represented the Georgia corporations in the defence of the Robinson suit in the Circuit Court for the Northern District of Georgia, attention is called to the fact that he did not leave it doubtful in that record, that he appeared for and represented the Georgia corporations only.

This is shown not only by the answers filed by him to the bill, admitting the Georgia incorporation and citizenship, (Record, p. 14), the reference in the answer to the Georgia charter of the Alabama and Georgia Manufacturing Company (Record, p. 21), but also by his testimony that he had advised in the procurement of the Georgia charter of the Huguley Manufacturing Company and had been its attorney in this and other matters in Georgia since. (Record, p. 26.) Moreover it appears that the Alabama and Georgia Manufacturing Company (the Georgia corporation) had substantial rights in at least a part of the property mortgaged, viz.: the franchise and riparian rights granted to it by the Legislature of Georgia in its charter (Record, p. 529). It further appears that the Huguley Manufacturing Company (the Georgia corporation) had acquired, or thought it had acquired, rights in the same property, through a purchase at a receiver's sale made by the State Court of Harris County, Georgia. These Georgia corporations set up whatever rights they had, or thought they had, when sued as such Georgia corporations by Robinson. There was no misrepresentation by the pleadings or by the testimony as to the citizenship of the parties.

The Alabama corporations were under no obligation legally or morally to break into the Georgia suit, when the complainant with full knowledge of the facts, had deliberately elected to ignore them.

ARGUMENT.

WANT OF IDENTITY BETWEEN THE ALABAMA CORPORATIONS AND THE GEORGIA CORPORATIONS OF SIMILAR NAMES.

The only evidence before the court that can be invoked by the Riverdale Cotton Mills, complainants, as indicative of an identity between the Alabama and Georgia Manufacturing Company, defendant, as a Georgia corporation in the Robinson suit, and in the Alabama and Georgia Manufacturing Company, complainant in the Alabama suit, as an Alabama corporation, is, (a) The charter of "The Alabama and Georgia Manufacturing Company," by the Act of the of the Legislature of *Alabama*, of February 7, 1866, which appears as "Exhibit A" to the Alabama bill (Record, pp. 486, 494), and which is set up in the answer to the so-called ancillary bill. And (b), The charter of the "Alabama and Georgia Manufacturing Company," by the Act of the Legislature of Georgia, of March 21, 1866, which appears as "Exhibit C" to the answer to the so-called ancillary bill. (Record, p. 539.)

Aside from the fact that the two charters were granted to the same incorporators, and that many of the provisions were the same, the following radical elements are pointed out, showing that the Act of the Legislature was not a license to the Alabama corporation to do business in Georgia nor the grant of authority for the Alabama corporation to become a corporation of Georgia, or to consolidate with a Georgia corporation:

(1) The Alabama corporation was chartered a month and a half prior to the Georgia corporation, yet there is no reference in the charter of the latter to the charter or existence of the prior corporation;

(2) The charter of the Alabama corporation provided that "The place of business shall be *on the Chattahoochee river in the neighbor hood of Campbell's Mills in the county of Chambers and in the State of Alabama.*"

The charter of the Georgia corporation provided that "The place of business of said corporation shall be *Columbus, Georgia, or LaGrange, Georgia.*"

(3) The charter of the *Alabama* corporation gave it power—

"To have, hold, receive and purchase, possess and enjoy to them

"and their successors, all real and personal estate, of whatever kind "or amount said corporation may deem necessary to carry all the "objects of said corporation in full force and effect" * * * * * "That the objects of said corporation shall be the manufacture of "wool and cotton into thread and cloth (etc.). The place of busi- "ness shall be on the Chattahoochee river in the neighborhood of "Campbell's Mills in the county of Chambers and in the State of "Alabama; and to enable the said named persons in the first section "of the charter to carry out the purposes of this charter, they and "their successors and associates may control and use the water of the "Chattahoochee river, so far as the riparian rights of *this* State are "concerned, by locks, dams, canals or otherwise, for manufacturing "purposes generally."

The charter of the *Georgia* corporation gave it power:

"To have, hold, receive, purchase, possess and enjoy, to them and "their successors, all real and personal estate, of whatever kind or "amount said corporation may deem necessary to carry all the ob- "jects of said corporation into full force and effect." * * * * "That the objects of said corporation shall be the manufacture of "wool and cotton into thread and cloth, etc." * * * * "And to "enable the said persons named in the first section of *this charter*, "they and their successors and associates, may control and use the "water of the Chattahoochee river, so far as the riparian rights of "*this* State are concerned, by locks, dams, canals, or otherwise, for "manufacturing purposes generally; *provided*, that nothing in this "Act shall be so construed as to give said corporators, or their suc- "cessors, the privilege to interfere with, or disturb the *vested rights* "of any person or persons whomsoever, either on the east or west "bank or islands in the Chattahoochee river, and that said dams, "locks, and canals, shall not extend more than half way across said "river, etc." * * * *

"That said corporation shall have the right and privilege to build, "erect, make and preserve all dams, locks, canals, abutments, or "other needful structures half way across said Chattahoochee river, "as may be necessary to give them the greatest amount of water "power, and to use for that purpose the islands *contiguous* to their "lands for abutments and dams, *and to erect all needful buildings "on the EAST side of the river*, and to carry on any branch, or "branches, of the same in *this* State, that said charter authorizes "them to engage in, or carry on, in the State of Alabama."

(4) The charter of the *Alabama* corporation did not fix a limit to its capital stock, but provided:

"That said body corporate shall have power to prescribe the num- "ber of shares into which the capital stock of said corporation shall

"be divided, the mode in which it shall be taken and paid, trans-
"ferred or assigned, etc."

The charter of the *Georgia* corporation, on the other hand, provided:

"That the capital stock of said company shall be fifty thousand
"dollars, with permission to increase the same to one million dollars,
"which stock shall be divided into shares of one hundred dollars
"each." * * * *

"That said corporation shall not organize and commence business
"until the capital stock shall have been subscribed, and ten per cent.
"of the same paid in."

(5) There is absolutely *no* authority given in *either* charter to *consolidate with or merge itself* into any other corporation.

A consideration of the foregoing provisions of the respective charters shows that the intent of the Legislature of Georgia was to create a *new* Georgia corporation, with a new capital required to be paid in, with power to use the riparian rights of Georgia in the Chattahoochee river, and to erect needful buildings for factory purposes on the *East* (*Georgia side*) *only*, of the Chattahoochee river, and that said corporation was to have and maintain its principal office in Georgia, and that it was neither a license to or recognition of the pre-existing Alabama corporation, or authority to either corporation to consolidate or merge itself in the other.

Copeland *vs.* Memphis, etc., R. R., 3 Woods, 662.

Now consider, in this connection, the facts, well-pleaded by defendants, and which must be taken as *true* in the absence of proof by complainants, viz.: the averment of the Alabama bill:

"That said last mentioned corporation was duly organized under said charter (Act of General Assembly of Alabama, of February , 1866), and was afterwards *seized and possessed*" of the lands in Alabama, the redemption of which is sought.

And take this, in connection with the averments of the ninth paragraph of the answers of the Alabama and Georgia Manufacturing Company of Alabama and the Huguley Manufacturing Company of Alabama, averring their charters and organization under the laws of *Alabama*, and charging that:

"Respondents aver that these two corporations so organized are the parties complainant to the suit in Alabama. That said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings."

And this, in connection with the fact that neither by admitted averment or proof is the Court justified in finding that the stock of

the two companies was held as a unit or that said companies were consolidated in law, or in fact, differentiates *this* case at bar from any other involving a *consolidated* company.

Nor is this a question of the validity of the mortgage attempted to be foreclosed in the Robinson suit. It may well be that the making of that mortgage may have been so ratified by the acts, both of the Alabama corporation and of the Georgia corporation, as to be binding upon each, and capable of being foreclosed against the Alabama corporation, in the Courts of *Alabama*, in respect to all lands covered by it *there*, and capable of being foreclosed against the Georgia corporation, in the Courts of *Georgia*, in respect to all lands covered by it there, but the question is one of the jurisdiction acquired by the Circuit Court of the United States over the Alabama corporation in a suit commenced and prosecuted solely against the *Georgia* corporation.

THE ALABAMA CORPORATIONS COULD NOT HAVE BEEN MADE PARTIES DEFENDANT TO THE ROBINSON SUIT WITHOUT OUSTING THE JURISDICTION OF THE COURT.

This is the principle laid down in Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286, and has been repeatedly affirmed. In that case the Court said:

"It is true, that a corporation by the name and style of the plain-
"tiffs appears to have been chartered by the States of Indiana and
"Ohio, clothed with the same capacities and powers and intended to
"accomplish the same objects, and it is spoken of in the laws of the
"States as one corporate body, exercising the same powers and ful-
"filling the same duties in both States. Yet it has no legal existence
"in either State, except by the law of the State. And neither State
"could confer on it a corporate existence in the other, nor add to or
"diminish the powers to be there exercised. It may indeed be com-
"posed of, and represent, under the corporate name, the same natural
"persons. But the legal entity or person, which exist by force of
"law, can have no existence beyond the limits of the State or sov-
"ereignty which brings it into life and endues it with its faculties
"and powers. The president and directors of the Ohio & Missis-
"sippi Railroad Company is, therefore, a distinct and separate cor-
"porate body in Indiana from the corporate body of the same name
"in Ohio, and they can not be joined in a suit as one and the same
"plaintiff, nor maintain a suit as one and the same plaintiff, nor
"maintain a suit in that character against a citizen of Ohio or
"Indiana in a Circuit Court of the United States."

Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286-298.

Quoted and approved in:

St. Joseph & Grand Island R. R. *vs.* Steele, 167 U. S. 163.

The converse of this proposition must be equally true, that is to say, the corporations of the two States could not be *joined* as *defendants* in a suit by a citizen by either State in a Circuit Court of the United States of either State.

"The defendant being a corporation of the State of Alabama, has "no existence in this State as a legal entity or person, except under "and by force of its incorporation by this State; and, although in- "corporated in the State of Tennessee, must, as to all its doings "within the State of Alabama, be considered a citizen of Alabama, "which can not sue *or be sued by another citizen of Alabama in the "courts of the United States.*"

Memphis and Charleston R. R. Co. *vs.* Alabama, 107 U. S. 581, citing:

Ohio & Miss. Railroad Co. *vs.* Wheeler, 1 Black, 286.

Railway Co. *vs.* Whitton, 13 Wall. 270, 283.

Robinson, Trustee for the bondholders, a citizen of Alabama, elected to bring suit in the Circuit Court of the United States for the Northern District of Georgia, against the *Georgia* corporation *alone*, he could not make the *Alabama* corporation a party defendant without ousting the jurisdiction of the Court. Whatever adjudication he obtained in that suit could, therefore, be binding only on the *Georgia* corporation, and must be taken as having been made without prejudice to the rights of the *Alabama* corporation.

47 Equity Rule.

THE ALABAMA CORPORATIONS COULD NOT HAVE BEEN MADE PARTIES DEFENDANT TO THE ROBINSON SUIT WITHOUT OUSTING THE JURISDICTION OF THE COURT, AND THEREFORE THEIR RIGHTS COULD NOT HAVE BEEN ADJUDICATED THEREIN.

"The rights and liabilities of a State corporation, which has been "incorporated in several States, as a corporation of States other "than that which created it, can not be adjudicated in a suit in a "Federal Court in which jurisdiction depends upon its citizenship "in that State, and would be ousted by citizenship in the other "States."

Louisville, etc., R. R. Co. *vs.* Louisville Trust Co., 174 U. S. 552.

Moreover, if the Circuit Court of the United States for the Northern District of Georgia could have no jurisdiction on the original bill, at the suit of a citizen of Alabama against the Alabama cor-

poration joined with the Georgia corporation, it surely could not acquire jurisdiction, merely by obtaining a decree against the Georgia corporations first, and setting up this decree in the same Court as binding on the Alabama corporation, and enforcing it as on ancillary jurisdiction.

Can the Court say to the Alabama corporation, we are without jurisdiction to hear you as a party defendant in this cause, because it would oust the jurisdiction of the Court, but we will adjudicate the right of the *Georgia* corporation, of the same name, and then we will hold this binding upon you, and that will give us ancillary jurisdiction over you, and enable us to perpetually enjoin you from asserting any right of redemption or other right in this property? The very statement of the proposition shows its absurdity.

THE DECISIONS AS TO THE EFFECT OF AN ADJUDICATION IN ONE STATE ON THE PROPERTY RIGHTS OF A CORPORATION CREATED UNDER THE LAWS OF ONE STATE, AND RECOGNIZED OR DOMESTICATED UNDER THE LAWS OF OTHER STATES, DO NOT TOUCH THE QUESTION IN THE CASE AT BAR.

Where there is but one corporation created by one State, but recognized or domesticated in other States for the purpose of police supervision, the rule now seems to be that for purposes of Federal Court jurisdiction such corporation is conclusively presumed to be composed of citizens of the State which *first* gave it corporate existence.

Railway Co. *vs.* Trust Co., 174 U. S. 552-563.
Southern Railway *vs.* Allison, 190 U. S. 326.

THE DECISIONS AS TO THE EFFECT OF AN ADJUDICATION IN ONE STATE ON THE PROPERTY RIGHTS OF A CORPORATION, WHICH IS THE RESULT OF A CONSOLIDATION OF SEVERAL CORPORATIONS CREATED UNDER THE LAWS OF SEVERAL STATES, DO NOT TOUCH THE QUESTION IN THE CASE AT BAR.

There is no question that where separate corporations have been created under the laws of several States, with charter powers authorizing them to merge their capital stock and consolidate, and where

they have in fact been consolidated, so that the capital stock is issued and held as a unit by one set of stockholders, and there is a single organization, that in such case the contract obligations of that one corporation may be enforced against it in any of the States creating it, although for the purposes of Federal Court jurisdiction it may be considered to be a citizen of the one State or the other as the circumstances of the case may require. The principle stated arises from the fact of merger and consolidation, an element totally absent from the case at bar, and a fact which counsel for petitioners wholly overlook in citing the cases on that line in support of their contention. See the cases cited:

Graham *vs.* Boston, Hartford & Erie R. R., 118 U. S. 161.
Nashua, etc., Co. *vs.* Boston, etc., Co., 136 U. S. 356.

CASES FURTHER DISTINGUISHED.

Muller vs. Dows, 94 U. S. 444.

In that case a suit was brought in the Circuit Court of the United States for the District of Iowa, by citizens of Missouri and New York, against two corporations alleged to be Iowa corporations. In the statement of the case by Mr. Justice Strong, it appears that one of the defendant corporations, the Chicago and Southwestern Ry. Co., was formed by the *consolidation* of two corporations of the same name, chartered under the laws of Missouri and Iowa respectively, and *consolidated* under authority of the laws of each State, which provided that such railroads were authorized to "merge and consolidate the stock of the respective companies, making *one* joint stock company of the railroads thus *connected.*"

And Mr. Justice Strong says:

"With these laws in force the *consolidation* of the Chicago and "Southwestern Railway was effected. The two companies became "one. But in the State of Iowa, that one was an Iowa corporation, "existing under the laws of *that* State *alone.*" (p. 447.)

It was further held that while for the purpose of Federal Court jurisdiction that "one" corporation was to be treated as a citizen of Iowa when sued in Iowa, that nevertheless the Circuit Court of Iowa had complete jurisdiction of the person of that "one" corporation, even in respect to rights or property held in other states. The Court say:

"It is here undoubtedly a recognized doctrine that a Court of "Equity sitting in a State, and having jurisdiction of the *person,* "may decree a conveyance *by him* of land in another State, and may "enforce the decree by process against the defendant." * * * "The "*mortgagors* who were foreclosed were enjoined against claiming

"property after the Master's sale, *and directed to make a deed* to "the purchaser in further assurance. And the Court can direct the "*trustees* to make a deed to the purchaser in confirmation of the "sale. We can not, therefore, declare void the decree which was "made." (pp.449-450.)

In that case, it will be observed, there was no effort to acquire jurisdiction over a corporation of *another* State by ancillary proceedings or otherwise, but by reason of *consolidation*, there being but the *one* corporation, and the Court having complete jurisdiction over the person of that one, the sole question was whether it could, under a trust deed, decree a sale of the railroad in both States and compel a conveyance. On the other hand, in the case at bar, *there never has been a consolidation*, and the Court never had or could have had jurisdiction of the *Alabama* corporations in the Robinson suit.

This case at bar is distinguished also from that of:

Graham vs. Boston, Hartford & Erie R. R., 118 U. S. 101.

In that case *one* corporation acquired *all* the property and franchises of several corporations owning railroads in several States, and there were legislative Acts of the respective States making that one corporation a corporation of each State respectively; but the capital stock was a unit with but one list of shareholders, owning the property everywhere, and the Court held, that under those facts, acts of the board of directors, authorizing the making of a mortgage, would be valid if done in either of the States in which it was created a corporation. The case arose by a stockholder coming into the same Court, which had foreclosed the mortgage, for the purpose of opening the decree, which, it was alleged, was based on a void mortgage, and the case did not turn on the *jurisdiction* of the United States Court; but in that case the Court say:

"One State may make a corporation of another State, as there "organized and conducted, a corporation of its own, *quoad* any "property within its territorial jurisdiction."

Graham *vs.* Boston, etc., R. R. Co., 118 U. S. 168.

"There are many decisions, both of the Federal and State Courts, "which establish the rule that however closely two corporations of "different States may unite their interests, and though even the "stockholders of the one may become the stockholders of the others, "and their business be conducted by the same directors, *the separate "identity of each* as a corporation of the State by which it was cre- "ated, and as a citizen of that State, is not thereby lost."

Nashua R. R. *vs.* Lowell R. R., 136 U. S. 375.

THE BILL OF THE RIVERDALE COTTON MILLS CAN NOT BE MAINTAINED AS AN ORIGINAL BILL FOR WANT OF FUNDAMENTAL JURISDICTION.

The bill of the Riverdale Cotton Mills of *Georgia* is predicated wholly upon the theory that it is a continuation of the suit of Robinson against the Alabama & Georgia Manufacturing Company, the *Georgia* corporation, and that there is, in fact, *no* Alabama corporation of that name, and that there is an identity between the Georgia corporation of that name and the Alabama complainant. The whole equity set up is based upon *res judicata*, and estoppel by reason of such alleged identity. Under said allegations of the bill, there being a want of diversity of citizenship between the complainant suing and the defendant sued, the bill can be maintained, if at all, *only* as an ancillary bill.

CAN NOT BE MAINTAINED AS AN ANCILLARY BILL, IF THE COMPLAINANTS IN THE ALABAMA SUIT BE DIFFERENT CORPORATIONS FROM THOSE DEFENDANT IN THE ROBINSON SUIT.

It is not enough for complainant here, to have alleged that the complainants suing in the Alabama suit are in fact the same corporations sued as defendant Georgia corporations in the Robinson suit. But on final decree it was essential to overcome the answer of defendants, and to *prove it*. If, in the absence of such proof the *contrary* is to be taken as true, as we have already seen it must be, the bill fails as an *ancillary* bill, because the jurisdiction over the defendants is predicated upon the theory that the defendants were parties to and bound by the former decree.

THE BILL NOT ANCILLARY.

French vs. Hay, 22 Wall. 250, distinguished:

In *that* case, French brought suit in the *State* Court of Virginia against Stewart and against Hay, to recover certain rents, and a judgment was rendered against Hay without giving him an opportunity to be heard. He came into Court and moved to open the decree. While this was pending, French brought suit against him in Pennsylvania, based on certified copy of that judgment. Hay removed the Virginia case into the United States Court, which, in due

course, declared the judgment against Hay null and void, and set it aside. Thereafter French obtained a judgment in Pennsylvania on the suit based on the Virginia judgment and was proceeding to enforce it, although the Virginia judgment had been set aside, in the suit between French and Hay in the United States Court as above stated. The United States Court in Virginia allowed Hay to maintain an ancillary bill against French, enjoining him from proceeding with his Pennsylvania judgment. The Supreme Court held that the bill was ancillary and dependent; that the Federal Court had first *jurisdiction of the whole* case, and having jurisdiction of the *person* of French, it could enjoin him from doing outside of the District things which it had power to prohibit within the District by reason of having jurisdiction of the whole controversy, and that in such a case, section 720 was not applicable.

This case is distinguished from the case at bar, in that the Circuit Court of the United States for the Northern District of Georgia neither had or could have jurisdiction in the Robinson suit of the *Alabama* corporations, complainants in the Alabama suit, for the want of proper diversity of citizenship, nor could that Court in a suit against the *Georgia* corporation make any decree affecting the rights of the Alabama corporations. So that the Circuit Court did not have jurisdiction of the whole case, nor jurisdiction of the *persons* of the complainants in the Alabama suit.

Root vs. Woolworth, 150 U. S. 401, distinguished:

The original bill *there* was brought to determine who had the right of possession and title to land, *within the territorial jurisdiction* of the Court.

The decree determined the right of possession and equitable title in favor of Morton, the complainant, and directed a deed of conveyance from Woolworth, the defendant, or by a commissioner, if he should not convey it in a specified time. He *failed* to convey and the commissioner made the deed to Morton, the land being in the State.

Morton's title was then assigned and transferred to Root. No writ of possession had been issued, but Root went on the land and divided it into town lots. Woolworth re-entered and refused to yield the premises to Root. The latter and Woolworth were citizens of the same State. The Court allowed Root to maintain a bill in the Circuit Court of the United States against Woolworth for the purpose of obtaining a writ of possession and enjoining Root from interfering.

It was held that the bill was ancillary to the original bill.

The Court say, as to the original decree, that it—

"established and concluded Morton's title against any claim of the

"appellant, and thereby necessarily included and carried with it the "right of possession to the premises as effectually as if the defendant "had himself conveyed the same. The decree in its legal effect and "operation entitled Morton to the possession of the property." (P. 412.)

The Court further say:

"The jurisdiction of Courts of Equity to interfere and effectuate "their own decree by injunction or writs of assistance in order to "avoid the litigation of questions once settled *between the same par-*"*ties,* is well settled." (P. 411-412.)

The Court further say:

"Such an ancillary bill may be brought by or against any person "claiming as assignee to *the party to the decree.* The appellee in "the present case occupies that position." (P. 411.)

In *that* case the defendant to the ancillary bill was the *same* defendant against whom an effective decree had been rendered in the original cause. There was no question involved of enjoining the proceedings in a *State* Court.

The bill in *that* case distinctly averred and the proof established "that in re-entering upon the premises Root claimed no rights there-"in and no title thereto except such as were asserted by him in oppo-"sition to Morton's right and title in the original suit." (P. 403.)

In the case *at bar,* the defendants sought to be enjoined in the so-called ancillary suit are *different* corporations in law and in fact from the corporations which were defendants to the original bill. They could not have been parties defendant to the bill without ousting the jurisdiction of the Court, and the Court was without jurisdiction to decree against *their property rights* in Alabama. Nor did the Court make any *effectual* decree conveying the title out of the defendants. Moreover, in the case at bar the defendants to the ancillary bill are not the assignees or privy in estate to the defendants in the original bill, and claim an *independent* source of title. Besides, they had set up their title in a *State* Court against the complainant in the so-called ancillary bill, and the latter had answered and submitted to the jurisdiction of the *State* Court *before* attempting to enjoin that proceeding.

The fundamental distinction between the two cases lies in the fact that in the Root case, the Court, by the ancillary proceeding, was putting in execution against Woolworth a valid decree against *him,* while in the case at bar the Court is asked to put in execution against two Alabama corporations decrees rendered against two Georgia corporations, the former not being assignees or privies to the parties to the former decree.

If the Court should hold (as we submit it ought not to do), that,

although the Georgia corporations were sued alone as such, and defended as such Georgia corporations, yet the Court will assume that it was the Alabama corporations which defended the Robinson suit, and that therefore they, having failed to plead their Alabama citizenship, the decrees heretofore rendered in the Robinson suit are binding on them; then we insist that only the *valid* decrees rendered in that suit can be so held. If the decree for the confirmation of sale and the deed to Alabama land made by Georgia commissioners be ineffectual or void, the equity of redemption is not cut off.

"It is the deed made to the purchaser actually transferring the "title of the parties to the suit, that terminates the mortgagor's "equity of redemption."

Chicago, etc., R. R. *vs.* Fosdick, 106 U. S. 71.

If, therefore, all that was *effectually* done in the Robinson suit, prior to the sale and commissioner's deed, be valid, even as against the *Alabama* corporations (which we deny), yet, when on the so-called ancillary bill it is shown that the defendants really sought to be bound by the suit of Robinson, a citizen of Alabama, were and are corporations of Alabama, the Court, being now apprised that there was a fatal want of fundamental jurisdiction from the beginning, can not go on now, with that knowledge, and grant further relief by injunction against the Alabama corporations, or complete the equitable relief which it did not give in the first instance, and which it might otherwise give on the Robinson bill if the want of original jurisdiction over the parties had not so been made to appear. It is not a case of change of interest after the original jurisdiction rightfully attached.

In other words, if there had been no Georgia corporations, but if the Alabama corporations had been sued on the allegations that they were Georgia corporations and had defended as such, then whatever valid final decrees were rendered while the Court had apparent jurisdiction on the face of the record might bind the Alabama corporations, but immediately upon its being made to appear that the defendants were Alabama corporations, the Court would be powerless to give any further relief on the Robinson bill, and would be bound to dismiss any supplemental bill brought by the same parties to perfect any *ineffective* decrees. For the same reason, a supplemental bill, seeking to cure defects in the former decrees in behalf of one claiming under Robinson, would have to be dismissed, because it seeks to obtain new relief not granted in the former proceedings or in execution of effective decrees, but on the allegations and equities of the old bill, *after the want of original jurisdiction* has become apparent.

These considerations differentiate this case from the Root *vs.* Woolworth case, even on the *theory* that the Alabama corporations were parties to the Robinson suit.

In the Root case the decree giving Morton the right of possession and directing the conveyance, and the conveyance, were all within the power of the Court and valid, and the supplemental bill was to carry those legal decrees into effect.

In the case at bar, the decree directing the commissioners to convey and the conveyance by the Georgia commissioners of Alabama lands were void, and the alleged ancillary bill seeks, *after* the want of fundamental jurisdiction has become apparent, to supply the place of these void decrees and acts, by an injunction based on the equities of the original bill.

EVEN IF ALL THE PROCEEDINGS IN THE ROBINSON SUIT WERE REGULAR, AND IF THE RIVERDALE COTTON MILLS ACQUIRED GOOD TITLE, ITS BILL BEING THAT OF AN ALLEGED PURCHASER TO PROTECT ITS TITLE AGAINST THE ALABAMA CORPORATIONS, NOT PARTIES TO THE SUIT, IT CAN NOT BE MAINTAINED ON ANCILLARY JURISDICTION IN THE FEDERAL COURT.

"That one claims title through a decree of a United States Court "does not create a Federal question so as to give jurisdiction."

Carson *vs.* Dunham, 121 U. S. 421, 429.

Prov. Sav. Soc. *vs.* Ford, 114 U. S. 630.

The purchaser, under such decree, is attacked in his title. The decrees of the Circuit Court are a part of his title and he relies on them.

Ralston *vs.* Sharon, 51 F. R. 702.

Wood *vs.* N. Y. & N. E. R. Co., 61 F. R. 236.

In Ralston *vs.* Sharon, 51 Fed. 702, it was held as follows:

"It being alleged in the bill that all the parties to the suit were "citizens of the State the Court has no jurisdiction, as defendants, "*not having been parties to the former suit,* and not being the per- "sonal representatives of the defendant, and the property, which was "the subject of the former contest, *not being any longer subject to* "*the order of the Court,* the bill was an *original* one, not dependent "upon or ancillary to, the original suit, *and a State Court of Equity* "*could give full relief.*"

The bill of the Riverdale Cotton Mills is not a bill filed to carry the decrees under the Robinson suit into execution; it sets up that said decrees have been *fully executed.* The equities set up are rights claimed to have been acquired under said decree, as a basis for new

relief, viz.: injunction against the Alabama corporations, which were not and could not have been parties defendant to the Robinson suit without ousting the jurisdiction of the Court.

"After a decree has been completely carried into effect, a motion "for injunction can not be made in the cause as it is out of Court."
Kerr on Injunction, p. 662.

Over such a bill brought by the Riverdale Cotton Mills, the State Court of Alabama would at least have *concurrent* jurisdiction with the Federal Court.
R. R. Co. *vs.* R. R. Co., 111 U. S. 505.

The Riverdale Cotton Mills, having filed its defence in the *Alabama* suit, they are committed to *that* forum. *The State Court jurisdiction attaching, its exercise can not be enjoined.*
Sec. 720 R. S.
Peck *vs.* Jenness, 7 How. 320.

That matter might have been set up in Federal Court by cross-bill will not prevent resort to other Court by independent bill.
Washburn & Moen Mfg. Co. *vs.* Scott & Co., 22 F. R. 710.
Christmas *vs.* Russell, 14 Wall. 69.

NO ESTOPPEL ON THE ALABAMA CORPORATIONS BY FAILURE TO PLEAD THEIR RIGHTS IN THE GEORGIA SUIT.

Neither of the Alabama corporations having been sued in the Georgia Court, and that Court being without jurisdiction to pass adversely upon their rights, the *Alabama* corporations were under no obligation, either legal or moral, either to break into that Court or to assert or defend their rights there.

In Wiser *vs.* Lawler, 189 U. S. 271, decided April 27, 1903, Mr. Justice Brown for the Court said:

* * * * "It would certainly be an exceptional case if a per-"son, *holding a deed of property which he has placed upon record,* "would be bound to disclose his title to a person contemplating pur-"chasing or making improvements upon the land, or would be "estopped from making his claim thereto by mere silence, since he

"has a right to rely upon the constructive notice given by the record; "although the rule would be otherwise in case of positive misrepre- "sentations upon his part."

Brant *vs.* Virginia Coal & Iron Co., 93 U. S. 326, 337.
Knouff *vs.* Thompson, 16 Pa. St. 357.
Brinkerhoff *vs.* Lansing, 4 Johns. Ch. 65.
Rice *vs.* Dewey, 54 Barb. 455.
Kingman *vs.* Grayham, 51 Wis. 232.
Sulphin *vs.* Dunbar, 55 Miss. 255.
Porter *vs.* Wheeler, 105 Ala. 451.

The authorities also recognize a distinction between mere silence and a deceptive silence accompanied by an intention to defraud which amounts to a positive beguilement.

Summer *vs.* Seaton, 47 N. J. Eq. 103.
Hill *vs.* Epley, 31 Pa. St. 331.
Markham *vs.* O'Connor, 52 Ga. 183.

HOW FAR THE RECORD IN THE ROBINSON SUIT CAN BE TREATED AS EVIDENCE IN THE SO-CALLED ANCILLARY SUIT.

The bill of the Riverdale Cotton Mills, paragraph V, refers to the records of the Robinson suit and says as to the same "which are hereby referred to and made a part of this bill of complaint, with leave to refer thereto as often as may be necessary."

The record in the Robinson suit was *never offered in evidence*, and yet it was before the Court and properly considered by it on the final hearing as part of the pleading, as evidence in the records of the Court of which it would take judicial notice. But evidence of *what?*

It was evidence of the fact that such and such matters were in issue between the parties to that cause, that such matters were adjudicated between said parties and that certain evidence was taken and certain agreements between Counsel for those parties were made as to evidence. But it was *not* evidence, in the Riverdale suit, of the truth of the facts about which evidence had been given by either party, nor was the adjudication binding, upon any other person not a party to the Robinson suit, or holding under such party.

Since the Alabama corporations were not parties to the Robinson suit, and could not be made parties defendant, and their *rights* could not be adjudicated therein (Railway Co. *vs.* Trust Co., 174 U. S.

552), and since they are not privies in estate, to use the language of Mr. Justice Holmes:

"Of course the adjudication in such suit does not conclude stran-
"gers."

Pardee *vs.* Aldridge, 189 U. S. 429-432.

Much less does evidence taken, or admissions made by parties in that suit as to their rights, bind *different* parties in the *other* suit.

Mr. Greenleaf, in his work on Evidence, under the head of "Admissibility and Effect of Records as Evidence," thus states the doctrine:

"It is a most obvious principle of justice, that no man ought to
"be bound by proceedings to which he was a stranger; but the con-
"verse of this rule is equally true, that by proceedings to which he
"was not a stranger he may well be held bound."

Greenleaf on Evidence, Vol. 1, Sec. 522.

"Under the term 'parties,' in this connection, the law includes all
"who are directly interested in the subject-matter, and had a right
"to make defence, or to control the proceedings, and to appeal from
"the judgment. This right also involves the right to adduce testi-
"mony, and to cross-examine the witnesses adduced on the other
"side. Persons not having these rights are regarded as strangers
"to the cause. But to give full effect to the principle by which par-
"ties are held bound by a judgment, all persons who are represented
"by the parties, and claim under them, or in privity with them, are
"equally concluded by the same proceedings. We have already seen
"that the term 'privity' denotes mutual or successive relationship to
"the same rights of property."

Greenleaf on Evidence, Vol. 1, Section 523.

"But as we have before remarked, the verdict and judgment in
"any case are always admissible to prove the fact, that the judgment
"was rendered, or the verdict given; for there is a material differ-
"ence between proving the *existence* of the record and its *tenor*,
"and using the record as the medium of proof of the matters of
"fact recited in it. In the former case, the record can never be con-
"sidered as *res inter alios acta;* the judgment being a public trans-
"action, rendered by public authority, and being presumed to be
"faithfully recorded. It is therefore the only proper legal evidence
"of itself, and is conclusive evidence of the fact of the rendition of
"the judgment and of all the legal consequences resulting from that
"fact, whoever may be the parties to the suit in which it is offered
"in evidence."

Greenleaf on Evidence, Vol. 1, Section 538.

"The distinction between the admissibility of a judgment as a "fact, and as evidence of ulterior facts, may be further illustrated "by the instances in which it has been recognized. Thus a judg- "ment against the sheriff for the misconduct of his deputy is evi- "dence against the latter of the fact, that the sheriff has been com- "pelled to pay the amount awarded, and for the cause alleged; but "it is not evidence of the fact upon which it was founded, namely, "the misconduct of the deputy, unless he was notified of the suit "and required to defend it."

Greenleaf on Evidence, Vol. 1, Section 539.

THE EFFECT OF THE ALLEGED STATE COURT RECEIVER'S SALE, IN HARRIS COUNTY, GEORGIA, OF THE MORTGAGOR'S EQUITY OF REDEMPTION IN THE ALABAMA PROPERTY, AFTER THE CREATION OF THE MORTGAGE, AS SET UP IN THE ROBINSON SUIT.

The answer of the Huguley Manufacturing Company, of *Georgia,* and the Alabama and Georgia Manufacturing Company, of *Georgia,* to the Robinson bill, set up among other things, that under certain judicial proceedings in Troup County, Georgia, in 1888, the property covered by the mortgage was, in January, 1890, sold, at receiver's sale, in Harris county, Georgia, subject to the mortgage, and bought in by certain persons, who conveyed all their rights and interest in the same to the Huguley Manufacturing Company. (Record, 15-17.)

There was an agreement of counsel in that suit, and expressly limited to that suit, also to the same effect. (Record, p. 118.)

So far as the record discloses, that receiver's sale and conveyance were also void as to lands in Alabama. If so, those proceedings can not be taken as divesting the Alabama and Georgia Manufacturing Company, the corporation of *Alabama,* the complainant in the Alabama suit, even of the equity of redemption.

Indeed, the ineffectiveness of the State Court receiver's sale made in Harris county, Georgia, in 1890, under the decree of the Superior Court of Troup county, Georgia, so far as it related to the Alabama lands, is distinctly averred in the answer of the Riverdale Cotton Mills to the Alabama bill. The averment of said answer is:

"That said sale was made and advertised in Georgia and neither "made nor advertised in Alabama, nor has said Huguley Manufac-

"turing Company (the Georgia corporation) ever acquired any title "or claim to the same by proceedings in Alabama." (Record, p. 518.)

But we insist that no part of this evidence is even admissible against the *Alabama* corporation, *not* a party to the Robinson suit.

It does not follow, however, even if the receiver's sale in Harris county, Georgia, be void, that the Huguley Manufacturing Company, the *Alabama* corporation, may not be entitled to the right of possession and the equities in these Alabama lands under the Alabama and Georgia Manufacturing Company, of *Alabama*. We are prepared to show, as averred in the Alabama bill, the *legal title* of the property to be in the Alabama and Georgia Manufacturing Company of *Alabama*, and joint equities in the property, in the latter and in the Huguley Manufacturing Company of Alabama, and a present right of possession in the latter, *irrespective of the proceedings in Troup and Harris counties, Georgia.*

These are the *rights* we are attempting to establish in the Alabama suit.

We submit that the *Alabama* corporations have a right to their day in Court, and are not precluded, either by the adjudication in the Robinson suit, or any evidence between the parties to *it* which may *seem* on its face to indicate that the Alabama and Georgia Manufacturing Company of Georgia lost all interest in the property to the Huguley Manufacturing Company of Georgia, by the Troup and Harris counties, Georgia, proceedings.

THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF GEORGIA HAD NO JURISDICTION OF THE SUBJECT-MATTER OF THE ROBINSON SUIT, SO FAR AS FORECLOSURE INVOLVED THE CUTTING OFF OF THE EQUITY OF REDEMPTION AND SALE AND CONVEYANCE OF LANDS IN ALABAMA, EVEN IF THEY BELONGED TO THE GEORGIA CORPORATION.

"It is an elementary principle of jurisdiction that a Court sitting "in one State, whether State or Federal, can not foreclose a mort "gage on and decree a sale of land situated in another State." * "The Courts of one State can have no jurisdiction over persons o

"property without its territorial limits, and any exertion of their "authority beyond those limits would be deemed an illegitimate as- "sumption of power, and be resisted as mere abuse."

Watkins *vs.* Holman, 16 Pet. 26.
Boyce *vs.* Grundy, 9 Pet. 275.
Northern Indiana R. Co. *vs.* Mich. Cent. R. Co., 15 How. 233.
Watts *vs.* Waddle, 6 Pet. 389.
Jones on Mortgages, Sec. 1444.
Farmers' L. & T. Co. *vs.* Postal Tel. Co., 55 Conn. 334.
Lynde *vs.* Columbus C. R. Co., 57 Fed. 993.
Black on Judgments, Vol. 2, Sec. 872.
Rorer on Intestate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited.

In Davis *vs.* Headley, 7 C. E. Green, 115, the learned Chancellor Zabriskie declared:

"It is a well-settled principle of law in the decisions of England "and of this country, and acquiesced in by the jurists of all civilized "nations, that immovable property is exclusively subject to the laws "and jurisdictions of the Courts of the State or nation in which it "is located, and that no other laws or Courts could affect it."

"The jurisdiction of Courts over land is *local*. Neither State nor "Federal Courts can reach or confer title, nor sell under a decree "those which are situated in a different State from that in which "the Court sits."

Boyce *vs.* Grundy, 9 Pet. 275 *supra.*
Watkins *vs.* Holman, 16 Pet. 16.

"And so in the district as to United States Circuit Courts."

Northern Indiana R. R. Co. *vs.* Mich. Cent. R. R. Co., 15 How. 233.
Watts *vs.* Waddle, 6 Pet. 400.
Rorer on In Interstate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited thereunder.

"And where a sale is made by virtue of an execution from the "United States Court, the State law directing the place of sale gov- "erns."

12 Plead. & Prac., 41, cited.
Smith *vs.* Cockrell, 6 Wall. 756.
Wayman *vs.* Southard, 10 Wheat. 1, and other cases cited.

By statutory enactment in nearly all the States, all sales of realty must be held *at the court-house in the county in which the property is situated.*

12 Ency. Plead. & Prac., citing:
Anniston Pipe Works *vs.* Williams, 106 Ala. 334.
Longworthy *vs.* Featherstone, 65 Ga. 165.
And numerous other cases cited from other States.

THE SALE, IN HARRIS COUNTY, GEORGIA, OF THE ALABAMA PROPERTY VOID, AS NOT CONFORMING TO THE STATUTE.

By Act of Congress of March 3, 1893, it is provided:

"That all real estate or any interest in land sold under any order "or decree of any United States Court shall be sold at public sale at "the court-house of the county, parish or city, in which the property, "or the greater part thereof, is located, or upon the premises, as the "Court rendering such order or decree of sale may direct."
27 Stat. L. 751, Sup. R. S., Vol. 2, p. 135.

The decree of sale did not provide for a sale on the premises, but at the court-house in the town of *Hamilton, Harris county, Georgia,* while under the admissions of the pleadings, the *entire* factory plant was *in Chambers County, Alabama,* and *all* the land, unless one detached and worthless island, used exclusively for agricultural purposes, and included in the mortgage, be in Harris County, Georgia, which is *disputed.*

The sale and confirmation were made after the charter of the Georgia corporation had expired, and that corporation was legally dead.

NEITHER THE DECREE IN THE ROBINSON SUIT, NOR THE DEED OF THE COMMISSIONER, COULD OPERATE TO CONVEY THE TITLE TO THE ALABAMA LANDS.

There was no provision in the decree of confirmation, either that the Alabama corporation, the owner of the legal estate, or that the trustees for the mortgage bondholders, should make title, and, it is

not claimed that *any* conveyance was made, except by the *commissioner* appointed by the Circuit Court.

The Supreme Court of the United States, in Carpenter *vs.* Strange, 141 U. S., 87-106, 35; 640-6, speaking through Mr. Chief Justice Fuller, held as follows:

"The real estate was situated in Tennessee and governed by the "law of its *situs*, and while by means of its power over the person "of a party a court of equity may in a *proper* case compel him to act "in relation to property not within its jurisdiction, *its decree does "not operate directly upon the property nor affect the title.* * * * "*The Court has no inherent power, by the mere force of its decree, "to annul a deed, or to* establish a title." (Hart *vs.* Sansom, 110 U. S., 151, 155, 28; 101, 103.)

"Hence, although in cases of *trust*, of *contract*, and of *fraud*, the "jurisdiction of a court of chancery may be sustained over the *per-"son*, * * * yet it does not follow that such a decree is in "itself necessarily *binding upon the courts of the State where the "land is situated.*"

"By its terms *no* provision whatever was made for its enforce-"ment against Mrs. Strange in respect of the real estate. *No con-"veyance was directed*, nor was there any attempt in any way to "exert control over her in view of the conclusion that the Court an-"nounced. *Direct action upon the real estate was certainly not with-"in the power of the Court*, and as it did *not* order Mrs. Strange to "take any action with reference to it, and she took *none, the courts "of Tennessee were not obliged to surrender jurisdiction to the "courts of New York over real estate in Tennessee, exclusively sub-"ject to its law and jurisdiction.*"

Carpenter *vs.* Strange, 141 U. S. 87-106, citing:
Story Confl. Laws, Sec. 543;
Wharton Confl. Laws, Secs. 288, 289;
Watkins *vs.* Holman, 41 U. S., 16 Pet. 25 (10:873).
Northern Indiana R. Co. *vs.* Michigan Cent. R. Co., 56 U. S., 15 How. 233 (14:674).
Davis *vs.* Headly, 22 N. J. Eq., 115.
Miller *vs.* Birdsong, 7 Baxt., 531.
Cooley *vs.* Scarlett, 38 Ill., 316.
Gardner *vs.* Ogden, 22 N. Y. 327.

"While a Federal Court of Equity may compel a conveyance of "lands in another State by a decree *in personam*, against a party "who holds the title, *it has no jurisdiction to itself transfer the title "to such lands by a sale and conveyance made through the Master "or commissioners.*"

Guarantee Co. *vs.* Delta and Pine Land Co., 104 Fed., p. 5.

MULLER vs. DOWS, 94 U. S., 444, RECONCILED.

In that case, there was a trust deed made by a single consolidated railroad company to trustees covering a railroad extending into two States. The bill was brought to execute this trust by a sale of the whole property as provided in the deed of trust. The Court had jurisdiction of the person of this one corporation.

In that case a suit was brought in the Circuit Court of the United States for the District of Iowa, by citizens of Missouri and New York, against two corporations alleged to be Iowa corporations. In the statement of the case by Mr. Justice Strong, it appears that one of the defendant corporations, the Chicago and South Western Ry. Co., was formed by the *consolidation* of two corporations of the same name, chartered under the laws of Missouri and Iowa respectively and *consolidated* under authority of the laws of each State, which provided that such railroads were authorized to "merge and consolidate the stock of the respective companies, making *one* joint-stock company of the railroads thus *connected*."

And Mr. Justice Strong, delivering the opinion of the Court, said:

"With these laws in force the *consolidation* of the Chicago and "South Western Railway was effected. The two companies became "one. But in the State of Iowa, that one was an Iowa corporation, "existing under the laws of *that* State *alone*." (P. 447.)

It was further held that while for the purpose of Federal Court jurisdiction that "one" corporation was to be treated as a citizen of Iowa when sued in Iowa, that nevertheless the Circuit Court of Iowa had complete jurisdiction of the person of that "one" corporation, even in respect to rights or property held in other States. The Court say:

"It is here undoubtedly a recognized doctrine that a Court of "Equity sitting in a State, and having jurisdiction of the *person*, "may decree a conveyance *by him* of land in another State, and may "enforce the decree by process against the defendant." * * * "The *mortgagors* who were foreclosed were enjoined against claim- "ing property, after the Master's sale, *and directed to make a deed* "to the purchaser in further assurance. And the Court can direct "the *trustees* to make a deed to the purchaser in confirmation of the "sale. We can not therefore declare void the decree which was "made." (P. 449-450.)

In that case, it will be observed, there was no effort to acquire jurisdiction over a corporation of *another* State by ancillary proceedings or otherwise, but by reason of *consolidation*, there being but the *one* corporation, and the Court having complete jurisdiction over the person of that one, the sole question was whether it could,

under a trust deed, decree a sale of the railroad in both States and compel a conveyance. On the other hand, in the case at bar, *there never has been a consolidation,* and the Court never had or could have had jurisdiction of the *Alabama* corporation in the Robinson suit.

A very thorough illustration of the proper course to be pursued, where property is in two States, will be found in the case of Wilmer *vs.* Atlanta and Richmond Air Line Company. In that case the existence of the two companies of different States was recognized, and the *two* companies appeared and were made *parties.* Furthermore, in regard to the property outside of the State, the Court expressly say:

"We are not asked to foreclose the mortgage. We are not asked "to confer on the trustees any power they do not already possess, "but simply to tell them what are their powers under their deed."

The Court also say: "The complainants may be required to file ancillary bills in other States," and the decree was that the *trustees* were directed to sell the road at Atlanta, Georgia.

Wilmer *vs.* Atlanta and Richmond Air Line Railway Co., 4 Woods, 447, 455, 456 and 457.

In the case at bar there never was any decree directing either the trustee or the mortgagor to make a deed to the purchaser; none was ever made, and the mortgagor defendant to the bill, the Alabama and Georgia Manufacturing Company, the Georgia corporation, was legally dead, by expiration of its charter (ante, p. 46), at the time of the sale and order of confirmation.

PROCEEDINGS AGAINST THE DEAD CORPORATION VOID.

The charter of the Alabama and Georgia Manufacturing Company of *Georgia* had expired on March 21, 1896, *prior* to the sale and *prior* to the conditional confirmation. Whatever may be said in favor of the validity of the decrees of March 30, 1895, and March 10, 1896, as fixing the amount of the indebtedness due and in default as against the Alabama and Georgia Manufacturing Company of *Georgia,* which was *then* in legal existence, it is clear that all the proceedings *subsequent* to March 21, 1896, when its charter expired, including the sale and confirmation, are *absolutely void.*

"The rule that the Master's report of a purchase must be abso-"lutely confirmed, before the contract can be considered as binding,

"applies equally to cases in which it is sought to compel a purchaser "to complete his purchase, as where it is sought to enforce the con- "tract against the vendor."

See Daniel's Ch. Pr., Sec. 1265, and cases cited.

"It is the deed made to the purchaser actually transferring the "title of the parties to the suit, that terminates the mortgagors' "equity of redemption."

Chicago, etc., R. R. *vs.* Fosdick, 106 U. S. 71.

The sale and confirmation were therefore judicial proceedings against a *dead* corporation, and therefore *void.*

"The judgment was therefore no more valid against a non-exist- "ing corporation than it would have been if rendered against a dead "man."

Pendleton *vs.* Russell, 144 U. S. 645.

As to the fact of the expiration of the charter, see ante p. 46,

May *vs.* State Bank, 2 Rob. (Va.), 40 Am. Dic. 726.

The only decrees rendered against the Huguley Manufacturing Company, even of *Georgia,* defendant in that suit, was a refusal to turn over to *it* the rents and profits, awarded in *its* favor as inter- vener, and decreed against the Galeton Cotton Mills for its deten- tion of the property under the first illegal sale, from September 6, 1892, to May 6, 1896. And there was a decree in its favor for $2,500 for its alleged private property not included in the mortgage wrongfully converted by the Galeton Cotton Mills.

THE RIGHT OF REDEMPTION WAS NEVER CUT OFF BY ANY OF THE PROCEEDINGS UNDER THE ROBINSON BILL.

Even if the decree of March 30, 1895, against the Alabama and Georgia Manufacturing Company of *Georgia,* alone, be valid as fixing the amount of indebtedness and determining that the rights of the parties, before the Court, demanded a sale of the entire prop- erty both in Georgia and in Alabama, if the property be partly in one State and partly in the other State, yet that decree did not and could not in itself cut off the right of redemption even of the parties to that cause; that right continued until there was a legal sale and legal confirmation of the sale, and a deed made conveying the title out of the mortgagor.

This Not a Collateral Proceeding

It is a well settled rule of jurisprudence that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceeding.

Williamson vs. Berry 8 *How.* 495.

"It is the deed made to the purchaser actually transferring the "title of the parties to the suit, that terminates the mortgagors' equity "of redemption."

Chicago, etc., R. R. *vs.* Fosdick, 106 U. S. 71.
Brine *vs.* Ins. Co., 96 U. S. 627.
Williamson *vs.* Berry, 8. How. 495-6.
Curtis *vs.* Millard, 14 Iowa, 129-130; 58 Iowa, 133.
Daniels' Ch. Pr., §1265, and cases cited.

Not only is the right of the Huguley Manufacturing Company of *Alabama* to redeem, not barred, because of the defects of jurisdiction of the Georgia Court to foreclose the lands in *Alabama*, and to make sale and conveyance by *commissioner*, as herein before pointed out, but it is not barred, *because no decree was ever rendered to that effect*, in the Robinson suit, against even the Huguley Manufacturing Company of *Georgia*, made defendant to that suit. And the foreclosure proceedings in Georgia could not operate as a proceeding *in rem* as to lands in Alabama.

The decree of foreclosure in the Robinson suit (Record, p. 380) was only against The Alabama and Georgia Manufacturing Company (the *Georgia* corporation), "and any one claiming under or through *IT*."

There can, therefore, be no ground for the contention that that decree cut off any rights of any one claiming under The Alabama and Georgia Manufacturing Company (the *Alabama* corporation), which was not a party to the Robinson suit.

IF THE RIGHTS TO REDEEM EXISTS, THEN A RIGHT TO BRING A BILL IN SOME COURT, FOR AN ACCOUNTING AND FOR REDEMPTION, MUST EXIST.

"A mortgagee in possession, whether in person, by trustee or re-"ceiver, or by tenant, is in equity accountable for the rents and "profits of the estate, and is bound to apply them in reduction of the "mortgage debt. The mortgagee is not allowed to make a profit "out of his possession of the estate; therefore, upon a redemption "of the mortgaged premises by any one interested in them he is "obliged to state an account of his receipts from the mortgaged "property, and he is entitled to allowance for all proper disburse-"ments made by him in respect of the mortgaged premises."

Jones on Mortgages, Sec. 1114.

"The liability of the mortgagee in possession to account always "arises when his entry and possession are in recognition of the "mortgage."

Jones on Mortgage, Sec. 1114.

In the Robinson suit, this Court held that the Galeton Cotton Mills, the purchaser under the first sale declared void, was to be treated as a mortgagee in possession. The same rule is aplicable to the Riverdale Cotton Mills, if the sale and title under which it claims to hold be illegal or ineffective.

"Where redemption is allowed after a foreclosure sale, if the "mortgagee purchases and enters into possession, he must account "for the rents and profits."

Jones on Mortgages, Sec. 1118.

"If a mortgagee enters into possession under a defective fore- "closure, he is in the position of a mortgagee in possession, and is "entitled to the crops and other products of the land and is account- "able for the rents and profits."

"An assignee stands in the place of his assignor in respect to the "account, whether he be an assignee of the mortgage or of the "equity of redemption."

Jones on Mortgages, Sec. 1119.

"After a mortgagee in possession has received payment of the "debt, he really holds the property in trust for the mortgagor."

Jones on Mortgages, Sec. 1159.

"Under an illegal sale, an accounting is allowed in Alabama, on "a bill for accounting and redemption."

Downs *vs.* Hopkins, 65 Ala., 508.

"The remedy by the mortgagor is by bill in equity for an account- "ing and redemption."

Farris *vs.* Houston, 78 Ala., 250.

"A mortgagee in possession by tenant or otherwise is accountable "for the rent and bound to apply it to lessen the debt."

Kellogg *vs.* Rockwell, 19 Coun. 446.

"Rents follow title, and the owner of the realty is the owner of "the rent."

Wm. Grant, receiver, *vs.* Buckner, 172 U. S. 237-8.

THE ALABAMA SUIT ENJOINED WAS SOLELY ONE FOR ACCOUNTING AND REDEMPTION. AT LEAST CONCURRENT JURISDICTION.

The Alabama bill is brought by the two Alabama corporations. It admits that the mortgage was executed by the Alabama and Georgia Manufacturing Company of Alabama, and does not seek to avoid the binding force of the mortgage as such on the complainants in that bill. While it does deny the binding force of the *foreclosure sale* of the Alabama property had in Georgia in proceedings against the *Georgia* corporation, as affecting the Alabama corporations, in whom it is averred *the title actually stands,* it fully concedes that whatever amount, if any, the mortgagees (or their agents in possession) may have paid on the mortgage debt to the mortgage bondholders by reason of the accounting of the Galeton Cotton Mills in the Georgia suit, or otherwise, should be credited on the total amount for which the mortgagees, or those holding under them, should account. (See paragraph 7th, of the Alabama bill.) It is therein further averred that said mortgagees or the corporations holding under them, have already received from the rents and profits more than sufficient to pay off the mortgage debt.

It will therefore be seen that the Alabama bill was:

(a) A suit between *different* parties from those in the Robinson suit.

(b) That the *object* of the two respective suits were different; the Robinson bill being a bill to *foreclose* the equity of redemption of the *Georgia* corporation in the mortgaged premises; the Alabama bill being one seeking to assert a right of *redemption* alleged to be in the *Alabama* corporations.

The pendency of the Robinson suit in Georgia, would not have deprived the *Alabama* Court of jurisdiction to maintain the Alabama suit, and much less could the fact that the former pendency of the Robinson suit be held to oust the jurisdiction of the Alabama Court over such a suit for redemption.

In Grant, receiver, *vs.* Buckner, 172 U. S. 237-8, the Court, in its opinion, concludes as follows:

"It is said in the brief that the Court first acquiring jurisdiction "has a right to continue its jurisdiction to the end. We fail to see "the application of this. The receiver *voluntarily* went into the "*State* Court, and having voluntarily gone there can not question "the right of *that* Court to determine the controversy between him- "self and the defendant. A similar proposition was often affirmed "in cases of bankruptcy, although by Section 711, Revised Statutes,

"the courts of the United States are given exclusive jurisdiction 'of "'all matters and proceedings in bankruptcy.'" (Citing authorities.)

And pursuant to this opinion, the Court held that Buckner was not precluded from obtaining the benefit of the right of set-off (of rents awarded him) in the *State* courts by the fact that the receiver was an officer of the *Federal* court, *or by any proceedings had in that Court, as the receiver voluntarily went into that Court;* and further held that the jurisdiction of the *State* court was clear, and affirmed *its* judgment accordingly.

The case of Glenn *vs.* Liggett, 51 Fed., 381, is in point. The Circuit Court of Appeals said therein:

"A suit in a Federal Court by a stockholder in behalf of himself "and other stockholders against a corporation and its officers, seek-"ing by injunction to correct abuses of administration, alleging in-"solvency and asking the appointment of a receiver to wind up the "business and pay the debts of the corporation, is not identical as "to interests of parties with a subsequent suit in a State Court by "a judgment creditor in behalf of himself and other creditors to "ascertain the validity of a deed of assignment from the corporation "to certain trustees, and asking the appointment of a receiver with "power to collect all assessments that may be made on the capital "stock, and otherwise care for and collect the assets and credits of "the corporation; and the pendency of the former suit and the ap-"pointment of a receiver therein does not deprive the State Court "of jurisdiction to entertain the latter."

"In such case the general rule that in case of concurrent jurisdic-"tion, the jurisdiction of the Court first taking control of the prop-"erty is exclusive, does not apply, it appearing that the receiver ap-"pointed by the Federal Court never had actual possession of the "corporation's property, excepting an insignificant portion which "was sold and the proceeds applied to the expenses of the receiver-"ship, that no assessments were ordered by that Court, and that the "receiver was discharged and *the case dismissed before any steps "were taken in the State Court* for the acquisition or distribution of "any property."

Glenn *vs.* Liggett, 51 Fed., 381.

THE COURT BELOW ERRED, IN GRANTING THE DECREE COMPLAINED OF, BECAUSE THE PLEADINGS AND PROOF, ON WHICH IT WAS RENDERED, DID NOT MAKE A CASE FOR THE EQUITABLE RELIEF GRANTED.

The complainants in the Alabama bill averred that they were corporations of *Alabama*, that *the title to the lands in question was in them and never had been in the Georgia corporations* of similar name; that the sale and conveyance by the *commissioner*, under the Georgia bill, was void as affecting their title to the lands in Alabama, and that their equity of redemption has never been cut off. and that the mortgage debt has long since been paid off by the receipt of over $500,000, of the profits by the mortgagees or those claiming under the mortgagees. If these allegations are true, there was equity in their bill for accounting and redemption.

The rights and equities of the Alabama corporations over which the Court could not have taken jurisdiction in the Robinson suit, for want of proper diversity of citizenship, could not be cut off by a decree in that cause.

Louisville, etc., Co. *vs.* Louisville Trust Co., 174 U. S. 552.

A bill, therefore, brought to enjoin such a suit, on the sole ground that the proceedings in Georgia, had cut off the equity of redemption of the Alabama corporations, a defence which is shown as matter of law not to be true, must be sustained by proof, and in the absence of such proof, the decree perpetually enjoining the suit for redemption, was a decree rendered without any equities to support it.

Moreover, as a matter of *practice*, if such a suit for redemption had been filed in the Circuit Court of the United States for the Northern District of Georgia, the proper practice would be to *defend* it, and *not* to *enjoin it*, and the same rule would apply if the redemption suit be brought in any other Court.

RAISING THE QUESTION IN THE CIRCUIT COURT OF APPEALS, OR IN THIS COURT OF WANT OF EQUITY IN THE DECREE APPEALED FROM, DOES NOT WAIVE THE QUESTION OF JURISDICTION OF THE CIRCUIT COURT OVER THE PERSONS OF THE ALABAMA CORPORATIONS.

The Alabama corporations, when actually enjoined and their hands tied by the preliminary injunction served upon their solicitors, came into Court, and raised the question of the jurisdiction of the Georgia Court over them, and confined their appearance and answer solely to facts, showing they were *Alabama* corporations, and that the Court had no jurisdiction over them or the Alabama property claimed by them, by way of ancillary proceedings to the Robinson suit. They stood on that defence alone, and left the complainant to make out its case by proof on all other facts averred in the bill. The Court ignored the defence of want of jurisdiction, and decreed on the whole bill. The defendants do not, therefore, waive their objection to the jurisdiction over their persons as Alabama corporations sued in Georgia, by excepting in this Court, to the decree as rendered for being without equity or proof to support it.

Southern Pacific Co. *vs.* Denton, 146 U. S. 203.

NO SERVICE.

The only attempt to make service or pretense of service on the Alabama corporations was (1) by restraining their solicitors, and (2) by service of process, *in Georgia*, on W. H. Huguley, and W. T. Huguley as individuals.

"No presumptions are to be indulged in favor of such a return "so as to give the Court jurisdiction over a non-resident corpora- "tion."

U. S. *vs.* American Bell Tel. Co., 29 F. R. 17.

Even if the service on W. H. Huguley and W. T. Huguley, as individuals, might, under some circumstances, be construed as service on the Alabama corporations of which they were officers or representatives, yet where it appears, from the complainant's own admissions in the record, that W. T. Huguley was, at the time, a resident and citizen of *New York* (Record, pp. 492 and 518), and that W. H. Huguley was a resident and citizen of *Alabama*, Chambers county (Record, p. 488), and that said corporations had ceased

to do business in Georgia for several years, such attempted service on officers of said Alabama corporations, who happened to be found in Georgia, is wholly ineffective.

THERE HAS BEEN NO WAIVER, BY THE ALABAMA CORPORATIONS, OF THE WANT OF JURISDICTION, IN THE GEORGIA COURT TO SUE THEM IN GEORGIA.

By making the solicitors for complainants in the Alabama suit, parties defendant to the bill of the Riverdale Cotton Mills, under averments that there were really no corporations of Alabama, and that there was an identity between the complainants there and the defendant Georgia corporations, parties to the Robinson bill, and by obtaining the temporary restraining order of June 10, 1901, restraining their solicitors from proceeding, the hands of the complainants in the Alabama suit were tied, without any actual service upon *them*, and they were forced to come in, in answer to the *rule nisi*, and raise the question of the jurisdiction of the Circuit Court of Georgia over them.

THE ANSWER LIMITED.

The answer of the Alabama and Georgia Manufacturing Company and of the Huguley Manufacturing Company, corporations of Alabama, asked a dismissal of the bill for want of jurisdiction, and no other appearance was entered. The defendants stood upon those objections. It was confined solely to the denial or averments of fact going to the want of jurisdiction in the Court, as to the subject-matter and the parties, or going to show that the bill could not be maintained, as an ancillary bill, by reason of any previous jurisdiction acquired over the persons of the defendants in the former suit against the *Georgia* corporations.

"Such objection to the jurisdiction is not waived by filing a de-
"murrer (or answer) for the special purpose of objecting to the
"jurisdiction, or by answering to the merits upon that demurrer be-
"ing overruled."

Southern Pacific Co. *vs.* Denton, 146 U. S., 203.

STATUTE OF LIMITATIONS NOT INVOLVED.

The point urged by the appellees in the Court of Appeals that the rights of the Alabama and Georgia Manufacturing Company of Alabama, had been barred by the adverse possession of the Huguley Manufacturing Company "for about ten years and a half," (the statute in Alabama being ten years,) has no merit in it. The Huguley Manufacturing Company of Alabama was not chartered and organized until February 27, 1890. (Record, pp. 531-5.)

Whatever possession it or the Alabama and Georgia Manufacturing Company of Alabama had, was ousted under the void sale made under the Robinson suit to the representatives of the Galeton Cotton Mills, confirmed by the Circuit Court of the Northern District of Georgia September 16, 1892, under which the Galeton Cotton Mills went into possession and retained it until after the said sale and decree were reversed by the Circuit Court of Appeals, and until after the second sale made by the Circuit Court under which the Riverdale Company went into possession under the confirmation order of October 15, 1898. (Record, p. 445.) The Alabama bill was filed May 2, 1901. (Record, p. 500.) There could, therefore, be no ten years adverse possession by the Huguley Manufacturing Company as against the Alabama and Georgia Manufacturing Company.

THE COURT ERRED, ON A BILL BROUGHT SOLELY BY THE RIVERDALE COTTON MILLS, AS A PURCHASER UNDER A DECREE OF OCTOBER 15, 1898, AND AS A CORPORATION CHARTERED AND ORGANIZED AFTER THAT TIME, IN GRANTING A PERPETUAL INJUNCTION RESTRAINING SO MUCH OF THE ALABAMA SUIT AS SOUGHT AN ACCOUNTING FROM THE GALETON COTTON MILLS, AND THE WEST POINT MANUFACTURING COMPANY, FOR RENTS AND PROFITS DURING THE PERIOD OF THEIR POSSESSION, FROM SEPTEMBER 6, 1892, TO OCTOBER 15, OR NOVEMBER 1, 1898, WHEN THE RIVERDALE COTTON MILLS' POSSESSION IS ALLEGED TO HAVE COMMENCED.

This proposition is elementary. Whatever equities or rights may exist in favor of the Galeton Cotton Mills and West Point Manufacturing Company, they were competent to set them up as matters of

defense in the Alabama suit, *as they have done.* As to the rents and profits between September 16, 1892, and October 15, 1898, they neither acquired or hold them under the Riverdale Cotton Mills, nor is any claim thereto set up by the Riverdale Cotton Mills by assignment or otherwise.

Yet the decree appealed from perpetually enjoins the Alabama suit against the Galeton Cotton Mills, and West Point Manufacturing Company, and enjoins the bringing of any new suit against those corporations. It is relief granted in favor of a *stranger* to the so-called ancillary bill, and as to rights in which the complainant in that bill has no concern.

THE JURISDICTION OF THE COURT OF APPEALS, AND OF THIS COURT.

An effort was made by the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company, the Alabama corporations, to obtain a writ of prohibition against the Circuit Court for the Northern District of Georgia, and mandamus, compelling it to dismiss the alleged ancillary bill for want of jurisdiction. The application was made just after the interlocutory order restraining the suit in Alabama was granted and before final decree. In denying this application as *premature,* the Supreme Court said:

"After final decree, an appeal to this Court would lie in respect of "the jurisdiction if the question were properly raised and certified, "or if issues were raised and decided, bringing the case within Sec- "tion 5 of the Act of March 3, 1891; or to the Circuit Court of Ap- "peals."

In re Huguley Mfg. Co., etc.; 184 U. S., 297; decided February 24, 1902.

The appellants elected to take the whole case to the Circuit Court of Appeals, and invoke its decision not only on the *jurisdictional* questions, but on the questions of *practice* involved, and the questions as to *want of equity* on the case as made to support the final decree granted against them.

MARION ERWIN,

Solicitor for Respondents.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 194.

Office Supreme Court
FILED
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JAMES H. McKENNEY
Clerk

THE RIVERDALE COTTON MILLS OF GEORGIA,
Petitioner,

vs.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA,

AND

THE HUGULEY MANUFACTURING COMPANY OF ALABAMA,
Respondents.

BRIEF OF

MARION ERWIN,

For Respondents, in reply.

JOHN T. MORGAN,
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I.

THE POSITIVE AVERMENTS OF THE ANSWER, TAKEN AS TRUE, DESTROY THE JURISDICTIONAL AVERMENTS OF RES JUDICATA MADE IN THE BILL.

Both sides agree that the hearing on the so-called ancillary bill was on bill and answer.

The answer of the Alabama and Georgia Manufacturing Company and of the Huguley Manufacturing Company (the *Alabama* corporations) to the so-called ancillary bill, not only avers their incorporation and organization under the laws of Alabama, and refers to their Alabama charters in the record, but contains these specific averments denying the allegations of the bill that they were parties to the Robinson bill on which the claim of *res judicata* is based:

> "The complainants in said bill are both corporations chartered under the laws of Alabama, *owning property in Alabama*, and advised that they are not concluded or affected by the proceedings heretofore had in this honorable court *since they were not parties thereto.*"
>
> (First Par. of Answer, Rec. p. 505).

> "That said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings."
>
> (Ninth Par. of Answer, Rec. p. 508).

We insist that these are distinct, positive allegations of fact, which, for decree on bill and answer, must be taken as *true*, and which eliminate the charge of *res judicata* from

the case, and leaves the so-called ancillary bill without either jurisdiction or equity to support it.

We submit that the attempt made by Mr. Brandeis, to escape the force of the above language by misconstruction, is whimsical. He says, in his reply brief (p. 6), that

> "The allegations that 'said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings', is apparently an allegation that they were never sued by that description; on any other construction it states a conclusion of law."

We submit that in an answer to a bill which charges the existence of two Georgia corporations having the same names respectively as the respective Alabama corporations, no more appropriate language could be used than was there used to express the fact that the Alabama corporations were never parties to said Robinson suit. It is precisely the form of expression used by Mr. Justice Gray, delivering the opinion of the Supreme Court of the United States in Louisville, etc., R. R. Co., *v.* Louisville Trust Co., to express the same idea and distinction relative to dual corporate existence and separate entities and rights under the same corporate name. The language used was:

> "The Louisville, New Albany and Chicago Railway Company is a party to this suit *as a corporation of Indiana* only and *not as a corporation of Kentucky*. It could not, either as a corporation of both states, or as a corporation of Kentucky only, have brought this suit against corporations and citizens of Kentucky, in the Circuit Court of the United States for the district of Kentucky, without ousting the jurisdiction of the court. * * * It necessarily follows that the rights and liabilities, if any, that it may have *as a corporation* of Kentucky or as

a corporation of Illinois, cannot be adjudicated in this case."

Louisville, etc., Ry. Co., *v.* Trust Co., 174 U. S. 576.

Notwithstanding the positive averments, twice made in the answer to the Alabama corporations, that they had never been parties to the Robinson bill, and notwithstanding that in his "Statements of Facts" in his principle brief (p. 5), as to what constituted the "substance" of said answer, Mr. Brandeis said:

> "The *respondents insisted* that the two Alabama corporations, plaintiffs in the suit in Alabama, *were not parties* to the foreclosure suit."

Yet, in his printed argument (p. 63), the following totally fallacious statement is made:

> "*There is no dispute* as to the identity of the corporation (Huguley Manufacturing Company) now before the court, with the corporation of the same name which was a party to the foreclosure suit."

And thereupon he quotes the language of the fifth paragraph of the answer, and, referring to it, says:

> "This contains a clear statement that the corporation represented in said former litigation and the corporation of the same name in this litigation are one and the same. * * * As the Huguley Company existed only as a corporation of Alabama, and as the Huguley Company was a party to the foreclosure suit, it follows that the corporation now before the court is the corporation a party to the foreclosure suit."

We submit that this attempt to make the answer admit *arguendo* what it denies positively is not permissible on a hearing on bill and answer. The fallacy in the deduction is easily pointed out. It lies in the premise, which we will now notice :

In the fifth paragraph of the answer it is alleged that :

> "In this connection respondents aver *on information and belief* that said Huguley Manufacturing Company was never incorporated or organized in the State of Georgia, although, as they further aver, the solicitors who represented said corporation in said former litigation in this court were not aware it was not so incorporated and said fact was not discovered until after the filing of said suit in Alabama, and before the bringing of this suit."

The fact that Col. N. J. Hammond, the Solicitor who had prepared the pleadings and defended the Robinson suit, for the Huguley Manufacturing Company, of Georgia, under the employment of Jannopoulo, its president, (Rec. p. 26), had since died, and that the answer of the Alabama corporations to the so-called ancillary bill was prepared and filed by Messrs. King & Spalding, new counsel brought into the case, throws light upon the fact that the allegations of this clause are made upon information only. That information, which was received from the clerk of the Superior Court of Troup County, Georgia, during the preparation of the answer of the Alabama corporations to the so-called ancillary bill, was that the application for this charter for the Huguley Manufacturing Company, which had been filed in the said Superior Court by Col. N. J. Hammond in behalf of the individuals who had purchased certain rights under the State Court receiver's sale in Harris County, Georgia, (Rec. p. 15), had never, in fact, been granted or passed upon by said Superior Court.

Assuming that this information was correct, that clause of the answer was drafted to plead the supposed fact that the corporation sued in the Robinson bill as a Georgia corporation, and which defended only as such, existed only as a *de facto* corporation, and which had never been legally chartered or organized. We say now, that, since the decree in this cause, we have discovered that the information from the clerk was erroneous, and we make the statement not to take anything from it by way of the effect of the pleading but to set ourselves right as counsel. For the purpose of this hearing on bill and answer, the allegations of the answer will be taken as *true*, that (1) the complainants in the Alabama suit were chartered and organized under the laws of Alabama and were *never parties* to the Robinson bill; (2) the Huguley Manufacturing Company, the defendant to the Robinson bill, was never legally chartered or organized under the laws of Georgia. And we say that the two allegations are not inconsistent, and both can stand together, and that it does not follow that because the defendant Huguley Manufacturing Company sued, and a party to the Georgia bill as a citizen of Georgia, had not been chartered in Georgia or legally organized, that it must therefore be the Alabama corporation of the same name. The positive averment in the answer that the Huguley Manufacturing Company (the Alabama corporation), was not a party to the Robinson bill, on a hearing on bill and answer, cannot be destroyed by considering the other averment that the Huguley Manufacturing Company, of Georgia, party to the Robinson bill, was not chartered in Georgia, as a piece of evidence from which, in connection with other facts, the court may infer that the Alabama corporation was in fact a party to the Robinson bill. To justify that inference the admitted fact that the defendant Huguley Company was not chartered in Georgia, must be totally inconsistent with any other theory than that the Alabama corporation co-

plaintiff in the Alabama suit, was in fact the same as the Huguley Company, defendant to the Georgia suit. The theory that the Huguley Manufacturing Company was a *de facto* corporation, for which, as Col. N. J. Hammond testified in the Robinson suit (Rec. p. 26), he had (or thought he had) obtained a charter in Georgia, and which had (or thought it had) acquired rights in the property in question under a sale by a state court receiver in Harris County, Georgia (Rec. pp. 15, 118), to which state court proceeding the Alabama and Georgia Manufacturing Company (the *Alabama* corporation) *was not a party*, is one which fully satisfies this averment, without conflict with the controlling averment that the Alabama corporations were not parties to the Robinson bill.

There is nothing in the Robinson suit to show that the Huguley Manufacturing Company (the Alabama corporation), chartered in Alabama, Feb. 27, 1890 (Rec. pp. 531-6), held or claimed to hold, the rights set up by it in the Alabama suit, under the sale of the state court receiver in Harris County, Georgia, under which the Georgia Huguley Company claimed in the Robinson suit. Besides, nothing in the Robinson suit, by way of evidence or pleading, can be taken herein as binding upon the Huguley Manufacturing Company, of Alabama, unless it is shown that it was a party thereto, and as to that it has a right to have its day in court, examine witnesses and be heard.

Again the averment in the fifth paragraph of the answer that:

> "For further answer, respondents aver that this court was without jurisdiction of said original foreclosure cause for that the complainant therein (Robinson) and the Huguley Manufacturing Company were citizens of the same state, to-wit, the State of Alabama,"

is a statement in the answer in the nature of a demurrer

to the allegations of the ancillary bill, and the inference sought to be drawn from it by Mr. Brandeis, that it was intended to admit that the Huguley Manufacturing Company, the defendant to the Robinson bill, was the Alabama corporation of that name, complainant in the Alabama suit, is totally unwarranted. That possible inference had been negatived both in the first and ninth paragraphs of the answer. The allegation of the fifth paragraph was intended to reach the allegation of the ancillary bill, which had attached to it, as an exhibit, a copy of the Alabama charter and organization in Alabama of the Huguley Manufacturing Company, and which had averred (Rec. p. 473), as matter of law, that the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company (the *Alabama* corporations) were in law one and the same entities as the respective corporations of corresponding names, which the bill charged had been created and organized under the laws of Georgia. The allegation of the fifth paragraph of the answer meets that by saying, in effect, if that be true, then the court was without jurisdiction of the Robinson suit for want of diversity of citizenship, and the court will not now give you further relief on supplemental proceedings, on the equities of the old bill, to perfect *ineffective* decrees, after the want of jurisdiction has been made apparent by your own averment.

We insist, therefore, that none of the *arguendo* inferences can overcome the *positive averments* of the answer that the Alabama corporations, plaintiffs in the Alabama suit, were never parties to the Robinson suit.

II.

THE ALLEGATIONS OF THE ALABAMA BILL, AS TO THE PROPERTY AND EQUITABLE RIGHTS THEREIN SET UP BY THE ALABAMA CORPORATIONS, ARE TO BE GIVEN AS MUCH FORCE ON THIS HEARING (IN WHICH THE ALLEGATIONS OF THEIR ANSWER THAT THEY WERE NOT PARTIES TO THE ROBINSON SUIT IS ADMITTED) AS IF EACH ALLEGATION WERE REPEATED IN THE ANSWER TO THE SO-CALLED ANCILLARY BILL.

It is the inherent right of any person, to bring and maintain a suit, in any court of competent jurisdiction, against another, for a property right claimed on the face of such suit, without let or hindrance, unless the matters are *res judicata* between the parties, and this right is not dependent upon whether the claim is well founded in fact or upon the ultimate truth of the facts averred. The right to bring and maintain the suit rests upon the *claim* to the property right or other right asserted.

It follows, therefore, that when a bill is brought by a complainant, to enjoin some other suit, on the jurisdictional ground that the matters involved are *res judicata* between the parties, even if the injunction bill goes further and charges that the plaintiff in the suit, sought to be enjoined, is not in fact possessed of the property rights asserted, yet, if such plaintiff answers such injunction bill, alleging the bringing of his suit in good faith and denying that such plaintiff was a party to the suit upon which the charge of *res judicata* is made, and the case is heard on bill and answer, so that the complainant in the injunction suit thereby *admits* that the matter is *not* in fact *res judicata*

between the parties, the right to the injunction is destroyed. For the question at issue is, not whether the plaintiff enjoined actually has the property rights asserted by him in his suit, but whether the complainant in the injunction suit has a right to stop him from suing in a court of competent jurisdiction on his *claim* of right therein set up.

The allegation of the injunction bill that the plaintiff's asserted property rights do not in fact exist, may be taken as true for the purposes of the hearing for injunction, because the right of the plaintiff, who has not had his day in court, to select his own forum and prosecute his suit to judgment there, is not dependent upon the ultimate truth or validity of the claim asserted but upon his *right to assert the claim* by suit and have it determined in that forum. Were it otherwise, the defendant to any suit, without averment or proof that the matter about which he is sued had theretofore been adjudicated between the parties, could file a bill and enjoin the prosecution of the suit on the ground that the plaintiff's property rights set up were not well founded in fact instead of defending the suit.

To apply this principle to this case:

The so-called ancillary bill charges that the complainants in the Alabama suit had filed said bill in Alabama and were making the claims there set up, and attaches a copy of it as "Exhibit B", (Rec. pp. 478-486).

The answer of the Alabama corporations, admits the filing of the bill, and the assertion in the Alabama court by them of the claims therein set up, but they deny the jurisdiction of the Circuit Court in Georgia to enjoin them from prosecuting their suit, and it is distinctly averred (Rec. p. 509), "They further state that said suit is instituted *in good faith*."

When, therefore, the case is heard on the bill and answer, on which hearing it must be taken as *admitted* that the claim had never been litigated before between the parties, and that the Alabama corporations are prosecuting their claim

in good faith, the question at issue is not whether the claims as to property rights, asserted in the Alabama bill, are true, but the question at issue is simply whether—admitting that the Alabama corporations had never before had their day in court—the complainant in the suit filed in Georgia, can enjoin them from maintaining a suit in Alabama, in which they are claiming and asserting *bona fide* the rights of property which are claimed in the Alabama suit.

So that, for the purposes of the hearing, the admissions in the so-called ancillary bill, that the Alabama corporations are in good faith asserting the claims and property rights set up by them in the Alabama suit, makes the assertion of the claim stand for as much as if it were admitted that the claims were in fact well founded, since the right to sue in a court of competent jurisdiction is not dependent upon the ultimate truth of the claim, but upon the *right to assert* the claim.

The answer of the Alabama corporations was purposely limited to statements of fact in denial of the allegations of the so-called ancillary bill that the court had jurisdiction over their persons through their identity claimed with the defendants in the Robinson suit, and other jurisdictional allegations upon which the claim of ancillary jurisdiction rested ; and when those facts were *admitted*, by setting the case down on bill and answer, together with the fact that they were in good faith prosecuting the claims set up in their Alabama bill, the so-called ancillary bill necessarily had to go out of court for want of jurisdiction.

III.

MR. BRANDEIS' ATTACK ON RESPONDENTS' STATEMENT OF FACTS.

On page 8 of my principal brief, there are six statements of fact, which, it is there claimed, must be taken as *true* on this hearing.

On page 4 of his reply brief, Mr. Brandeis makes an attack upon the statements referred to, numbered (5) and (6).

The statement, numbered (5), is as follows:

> (5) "That it was the *Alabama* corporation and *not* the Georgia corporation of similar name, *which owned, and holds the title* to the lands in controversy in the Alabama suit."

Mr. Brandeis says, "this is a fact not alleged in the answer and therefore is not to be taken as true."

We submit that the allegation, in substance, is contained in the Alabama bill, and that on a bill to enjoin that suit, in which hearing it is *admitted as a fact*, that the matters alleged in the Alabama bill had never before been adjudicated or litigated by the parties, that it is the *claim* of right and title to the Alabama property, and the right to assert that claim by the Alabama suit, which is in issue, and not the ultimate validity of the claim, and there can be no doubt that both the ancillary *bill* and the *answer* to it assert that the *Alabama* corporations *do* assert title to the Alabama lands. The first paragraph of the Alabama bill aver:

> "That said last mentioned corporation (the Alabama and Georgia Manufacturing Company, the *Alabama* corporation) was duly organized under its said charter, and was afterwards *seized and possessed of the following lands*, to-wit, etc. (Rec. p. 486).

> "'Seized and possesed' are allegations of title."
> 25 A. & E. Ency. of Law, p. 253.

> "If the seizen of a party, at a given time, is proved or *admitted*, the legal presumption is that such seizen *continues*."

> Brown *v.* King, et al., 5 Metc. (Mass.), 173.

The Alabama bill, after averring that the Huguley Manufacturing Company of Alabama, co-complainant therein, was a corporation created and organized under the laws of Alabama, contains this further allegation, in paragraph seven :

> "Your orator, the Huguley Manufacturing Company, a corporation, avers that it purchased and acquired all the property hereinabove described subject to said mortgage, and is now the owner of the same, subject to said mortgage." (Rec. p. 492).

The contract, by which the Huguley Manufacturing Company acquired the equities claimed by it, in these Alabama properties, the mutual rights and liabilities which exist, or *may* exist, between the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, complainants in that suit, are not set out in that bill, nor was it necessary to set the same out for the purposes of that bill, because they both joined in asking the accounting and relief prayed.

The solicitors for the petitioner in certiorari contend that the allegation of the Alabama bill, as to the Huguley Manufacturing Company "purchasing and acquiring" the equity of redemption, is an admission that the Alabama and Georgia Manufacturing Company (the *Alabama* corporation) has parted with all interest in the property and rents and profits therefrom, to the Huguley Manufacturing Company of Alabama.

We submit that such a conclusion is far from being warranted by that allegation. The fact that it is setting up a claim in the Alabama bill to the rents and profits and to the property jointly with the Huguley Manufacturing Company is sufficient to negative that. The terms of the purchase, the time when made, and the rights retained in the

property or rents, by the Alabama and Georgia Manufacturing Company (the *ALABAMA* corporation), may be such as to make its rights and interest in the property paramount. This court is not trying the case made on the Alabama bill, but simply whether the Georgia Circuit Court ought to be allowed to enjoin the assertion of the rights claimed by the complainants in the Alabama suit.

Mr. Brandeis also (p. 4 of his reply brief), attacks the statement, clause (6), made by me in my principal brief (8), to the effect that it must be taken as true, on this hearing on bill and answer, that the Georgia confirmation and sale are not binding upon the Alabama corporations, and he says as to it: "This is a conclusion of law and must be disregarded."

We submit that every fact stated in clause (6) is specifically pleaded in the answer, and is therefore *admitted*, and that the conclusion stated arises, as matter of law, from the facts therein stated:

(*a*) The fact that the Alabama corporations were *not parties* to the Robinson suit, is averred in the answer. (Rec. pp. 505-8).

(*b*) The fact that *all* the lands in controversy are situate, in fact, *in Alabama*, is specifically averred in the answer. (Rec. p. 507).

(*c*) The fact that the sale and confirmation under the Robinson suit were made *after* the charter of the Alabama and Georgia Manufacturing Company (the *Georgia* corporation) had expired, and, therefore, *after* the said corporation was legally dead, is specifically averred in the answer. (Rec. p. 507).

(*d*) The fact that the sale of the Alabama lands under the foreclosure in the Robinson suit was made without advertisement otherwise than in Georgia, and was made in Harris County, Georgia, appears from the record in the Robinson suit itself. (Rec. pp. 380, 390).

(*e*) The fact that the decree of foreclosure, of March 30, 1895, was rendered against the Alabama and Georgia Manufacturing Company (the *Georgia* corporation) only, and the equity of redemption against *IT*, and those "claiming under or through *IT*," only, barred, appears from the decree itself. (Rec. p. 380).

(*f*) The fact that the Riverdale Cotton Mills received a deed from the *commissioner* appointed to sell, only, (without more), appears from the averments of its own bill (Rec. p. 477), also from the record in the Robinson suit showing that there was *no* decree whatever directing either the mortgagor or the trustees to make conveyance, the only direction being that the *commissioner*, appointed to sell the property in Georgia, should make conveyance. (Rec. pp. 395, 446).

We insist, therefore, that by setting down the case on bill and answer, and thereby *admitting* these facts to be *true*, the conclusion stated in clause (6), page 8, of Respondents' principal brief, is amply justified.

IV.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY WAS A NECESSARY PARTY TO THE ROBINSON BILL, AT EVERY STAGE OF SAID SUIT.

The Alabama and Georgia Manufacturing Company, the *original mortgagor*, was a *necessary and indispensable* party to the Robinson foreclosure, at the time of passing upon its alleged liability for the attorneys' fees claimed, May 27, 1892, (Rec. pp. 3, 123-130), at the time of the sale, May 6, 1896, (Rec. p. 383), and at the time of the confirmations thereof, June 25, 1896, (Rec. p. 395), and October 15, 1898, (Rec. p. 446), and at the time, April 11, 1898, when the decree was made confirming the special master's report,

fixing the amount of the judgment for *deficiency* against it, and against the Huguley Manufacturing Company, parties defendant to that bill. (Rec. p. 428).

No valid judgment could be rendered affecting the rights of the *mortgagor*, affecting its relationship to the property and to the rents and profits of the same, in a proceeding to which it was *not* a party.

> Ayres *v.* Wiswall, 112 U. S. 187;
> Weldon *v.* Fritzlen, 123 Fed. 608-613;
> Worthington *v.* Lee, 2 Bland's Ch. Rep., 678.

> "The Georgia corporation was not a party *after* its death."
> Pendleton *v.* Russell, 144 U. S. 645.

It is contended, however, by the petitioner, that the death, March 21, 1896, of the Alabama and Georgia Manufacturing Company (the *Georgia* corporation), party defendant to the Robinson suit, cannot be taken advantage of in a collateral proceeding.

In the case at bar, however, the complainant in the ancillary suit has brought forward his decrees of confirmation, rendered against the dead corporation, and he relies upon that.

In a similar foreclosure suit in which there was a defect in confirmation of sale, and it was claimed that it could be taken advantage of only by a direct proceeding in the case, and not collaterally, the Supreme Court of the United States said:

> "It is a well settled rule of jurisprudence that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceeding."
> Williamson *v.* Berry, 8 How., 495.

If, however, the complainant in the so-called ancillary bill is to escape the consequences of not having the original mortgagor a party to the decree of confirmation, on the idea that the original mortgagor was not a necessary party, on what theory can he base his right to enjoin the original mortgagor from having its day in court? The original mortgagor is not a privy in estate to the assignee of the equity of redemption, and a judgment against the latter cannot deprive the former of having its day in court as to any rights it may have or claim.

V.

NO STATUTE OF LIMITATIONS OR BAR BY LACHES IN THIS CASE.

Under the first foreclosure and sale made in the Robinson suit, the purchase being made in the right of the bondholders, the Galeton Cotton Mills (itself chartered only under the laws of *Alabama*), went into possession of the Alabama properties. This sale was declared to be null and void and was set aside by the Circuit Court of Appeals, in 1893.

56 Fed., 690.

Nevertheless, the Galeton Cotton Mills stood in the position of mortgagees-in-possession, with the mortgage debt in default, as the mortgagees had the right to the possession and to continue to apply the rents and profits to the diminution of the mortgage debt until paid off, as held by the Circuit Court of Appeals.

94 Fed., 269.

Until the mortgagee had been in possession a sufficient time in which to pay off the debt, there was absolutely no

right in the mortgagor to demand possession of the property. During such period the statute of limitations does not run against the mortgagor.

> "After a mortgagee-in-possession has received payment of the debt, he really holds the property in trust for the mortgagor, and the statute of limitations does not run in his favor until by some further act he shows that his possession and claim have become adverse."
>
> 2 Jones on Mortgages, Sec. 1159.

The Galeton Cotton Mills, holding for the mortgagees, did not give up possession until after October 15, 1898, at which time the Riverdale Cotton Mills went into possession under the final decree of confirmation of the new sale (Rec. p. 445). The bill of the Alabama corporations was filed May 2, 1901 (Rec. p. 486). It follows, as is admitted in the first petition for *certiorari* filed by petitioner, that the suit filed for redemption was filed within less than two and a half years after the Riverdale Cotton Cotton Mills went into possession, and the right to bring the suit had accrued and it became apparent that the profits had paid off the mortgage debt.

V.

THE REVERSAL OF THE DECREE OF THE LOWER COURT BY THE CIRCUIT COURT OF APPEALS, —TERMS OF—NOTEWORTHY FEATURES.

On January 12, 1904, the Circuit Court of Appeals *reversed* the decree of the Circuit Court for the Northern District of Georgia, rendered September 29, 1902, and directed the *dismissal* of the so-called ancillary bill for want of jurisdiction, without prejudice to the right of the appellee (the petitioner in this court), to defend the suit against it

in the State Chancery Court of Alabama, or otherwise maintain in any court of competent jurisdiction, any rights which it may have against the Alabama corporations, the appellants there and respondents here.

As pointed out in my principal brief (at page 28), in reaching that conclusion, the Circuit Court of Appeals did not find it necessary to predicate its ruling upon but *two* out of the *many* points raised by the assignment of errors. It held :

> (*a*) "As the appellants (the *Alabama* corporations), could not have been parties defendant to the Robinson bill without ousting the jurisdiction of the court, and that court could not pass a decree against their property rights in Alabama, and (*b*) did not make any effectual decree conveying title out of them (if it could have done so), and they are not assignees or privy in estate to the defendants in that bill, and claim an independent source of title, the cases of French *v.* Hay, 22 Wallace, 250; Dietsch *v.* Huidekoper, 103 U. S. 494; and Root *v.* Woolworth, 150 U. S. 401, on which appellee relies, do not apply here."
>
> (Rec. p. 560.)

It is true that one of the judges of the Circuit Court of Appeals (Judge Pardee) dissented from the majority in the case at bar. He bases his views, it would appear, largely upon the idea that the bill filed by the Riverdale Cotton Mills comes within the definition of "an ancillary and supplemental bill," and that it was the duty of the Alabama corporations to have asserted their rights in the Robinson suit. Even Judge Pardee, while dissenting on the said particular point of "*practice*," as stated, in concluding his opinion, said :

> "There are some *other questions* raised in the assignments of error, the proper determination of

> which might require the *REVERSAL* of the decree below, and a *remand* for further proceedings, but as my brethren insist on a *dismissal* of the bill for *want of jurisdiction*, it is not necessary to consider *them*." (Rec. p. 564).

It is noteworthy that Judges McCormick and Shelby, who prepared the three former opinions of the Circuit Court of Appeals under the three several appeals taken there from the Circuit Court for the Northern District of Georgia, in the original Robinson suit, happen to be the same judges who joined in this last opinion of the Circuit Court of Appeals, in the injunction suit, in which it was held, as follows :

> "That the decree of the Circuit Court should be *reversed* and the cause remanded to that court with direction to *dismiss* the appellee's bill, without prejudice to the right of the appellee (petitioner here) to defend the suit against it in the *state* court, or to otherwise maintain, in any court of competent jurisdiction, any rights which it may have against the appellants. And it is so ordered." (Rec. p. 560).

MARION ERWIN,
Solicitor for Respondents.

JOHN T. MORGAN,
JOHN M. CHILTON,
WILLIAM S. THORINGTON,
ROBERT PORTER SHICK,
Of Counsel for Respondents.

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SUPREME COUR

No. 198. October Term, 1904.

IN THE

Supreme Court of the United States.

THE RIVERDALE COTTON MILLS,
Petitioner,

v.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY
AND
THE HUGULEY MANUFACTURING COMPANY,
Respondents.

On writ of Certiorari to the United States Circuit Court of Appeals for Fifth Circuit.

Opinion of Supreme Court rendered May 8, 1905.

Petition for Rehearing and for Modification of Directions as to Decree.

JOHN T. MORGAN,
MARION ERWIN,
JOHN M. CHILTON,
WILLIAM S. THORINGTON,
ROBERT P. SHICK,
Counsel for Respondents.

International of Chamber Bldg.

IN THE

Supreme Court of the United States.

No. 194. October Term, 1904.

THE RIVERDALE COTTON MILLS, *Petitioner*, *v.* THE ALABAMA AND GEORGIA MANUFACTURING COMPANY AND THE HUGULEY MANUFACTURING COMPANY, *Respondents.*	On writ of *certiorari* to the United States Circuit Court of Appeals for Fifth Circuit. Opinion of Supreme Court rendered May 8, 1905.

PETITION FOR REHEARING AND FOR MODIFICATION OF DIRECTIONS AS TO DECREE.

To the Honorable the Judges of the Supreme Court of the United States:

The respondents, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, in the above stated cause, respectfully ask for a rehearing in said cause, especially for the purpose of obtaining a hearing on the propriety of a modification of the directions in the opinion of the court, confirming in full the decree of the Circuit Court of the Northern District of Georgia, of September 29, 1902, rendered on the ancillary bill, and in support thereof set forth the reasons therefor.

In its opinion this Honorable Court has dealt with but *one* phaze of the case *only*, viz.: whether the Circuit Court for the Northern District of Georgia had jurisdiction, in the Robinson suit, of the Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company (the Alabama corporations), and whether the said Circuit Court had jurisdiction, by ancillary bill, to restrain them from prosecution of the suit commenced by them in the State Court of Alabama, and reached a conclusion in the affirmative on both those questions.

Assuming that to be true, and treating that as determining the whole case, this Court, in its opinion, did not examine into the terms of the decree of September 29, 1902, to see that it was in accordance with the equities and rights of the parties in the then, and present status of the case before that court, but directed a confirmation of the said decree.

We respectfully submit that the record discloses *substantial* rights in the respondents, which should be protected by this court in its directions to the courts below, conceding all that has been ruled in regard to the *jurisdiction* of the Circuit Court over them in the Robinson suit and on the ancillary bill, and the propriety of enjoining the Alabama suit.

It is true that the majority of the Judges of the Circuit Court of Appeals based their direction for a dismissal of the ancillary bill upon their view that the pleadings (the case being heard on bill and answer) showed that the *Alabama* corporations were *not* parties to the Robinson suit. But they also made a material finding of *fact*, which, it is respectfully submitted, is borne out and established by all the evidence and pleadings, and which as a question of fact is not controverted by any one. That court held that in the Robinson suit, the Circuit Court for the Northern District of Georgia "had never made any *effectual* decree conveying title out of the Alabama & Georgia Manufacturing Company, or the Huguley Manufacturing Company, even *if* it had jurisdiction

of them in the Robinson suit" (Opinion C. C. of Appeals, Record p. 560).

The only claim of title set up by the Riverdale Cotton Mills is the claim made by it in the ancillary bill, that it received a deed for said lands in controversy *from the commissioner* appointed to sell said lands and make deed to the purchaser, by the Circuit Court of the United States for the Northern District of Georgia, and that it had paid the purchase price under the confirmation decree of October 15, 1898. (Record, p. 477).

The provisions of the decree of October 15, 1898, referred to, are :

> "And it is ordered and decreed that the purchaser do pay into the court *within forty days* from this date the whole of the balance of the purchase money of said property, etc., * * * and that *upon the certificate of the Clerk* of the fact of such payment, *thereupon* the commissioner, S. C. Dunlap, Esq., *do execute and deliver* to said purchaser or such person as he may designate, *a deed* to the property sold," etc. (Record, pp. 446-7).

There is nothing in the record of the Robinson suit to show that the purchaser ever performed the conditions; no deed or copy of the deed from the Commissioner is in the record, and the claim of the Riverdale Cotton Mills rests wholly upon the averment in the ancillary bill to the effect that at some unknown time subsequent to said decree, it paid the purchase money, and it received a deed to the lands sold, including the lands and property in Alabama, from the Commissioner appointed in Georgia, by a Georgia Court, to make such sale and conveyance.

The exact allegation of the ancillary bill on this point is :

> "that in pursuance of the order of October 15, 1898, 'a deed was executed by direction of the said L. Lanier, by the *commissioner* of said court appointed to conduct the said sale, conveying the title to all the said property to your orator, and your orator paid all the

purchase money therefor into court, as required by order thereof.'"

(Record, p. 477.)

The record of the Robinson suit is before this Court. It is not disputeed that it fully shows that *there was never any decree or order in the Robinson suit, directing the mortgagor, the Alabama & Georgia Manufacturing Company, or the Huguley Manufacturing Company, or the trustees under the original mortgage, to make a deed conveying title to the purchaser, and there is no claim that they ever did.*

It is substantially stated in the original mortgage sued on in the Robinson suit (Record p. 4), that the factory plant and village were located and the lands lying within Chambers county, Alabama, although the mortgage erroneously described certain islands in the Chattahoochee river as lying in Harris county, Georgia.

The answer to the ancillary bill (and the case was heard on bill and answer), avers that the property is *all* in the State of Alabama, and makes it clear that certainly the factory and main part of the land lay in Alabama, (Record p. 507-8). The ancillary bill itself admits that the part of the property so described in the mortgage lay in Alabama, (Record p. 479).

Giving full effect, therefore, to all this Court has said in regard to the *jurisdiction* of the Court in Georgia, having jurisdiction of the *person, to decree* a foreclosure of a mortgage on lands in Alabama, under its ruling in the case of Muller *v.* Dows, 94 U. S., 444, the question is, what is the *legal effect on the title* to the lands in Alabama, and on the mortgagor's *right of redemption*, of a decree of the Georgia Court, in which it has not attempted t o exercise its jurisdiction in the way pointed out in Muller *v.* Dows. In that case, the question was whether the decree of the Court to foreclose and sell was void. The Court held it was not, because the lower Court *had directed the mortgagor to convey and the Court still had power to direct the trustees* under the mortgage *to convey* title to the purchaser. The Court did *not* hold, in that case, that the *decree itself* operated to convey title or to cut off the equity of redemption.

In the case at bar, the question is not whether the decree of the Circuit Court is void, but conceding it to be valid so far as it goes, as a decree of foreclosure and sale, whether it operates *in itself*, or through the Georgia *commissioner's* deed, to convey title to the lands in Alabama, and cut off the equity of redemption? And if the equity of redemption was not cut off, should not the decree of September 29, 1902, on the ancillary bill, which, *perpetually enjoins* the mortgagor, the Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, *from suing* for redemption in *any court*, be *modified* so as to allow them to set up any right of redemption they may have in the Circuit Court for the Northern District of Georgia, supplementary to the Robinson bill, and without prejudice to the right of the Riverdale Company, by supplementary proceedings, to require the mortgagor and trustee to make conveyance? The confirmation of the decree of Sept. 29, 1902, perpetually enjoining the Alabama & Georgia Manufacturing Company and the the Huguley Manufacturing Company from maintaining any suit for redemption anywhere, can only proceed on the theory that the decree of foreclosure itself operates to cut off the equity of redemption. This court has held:

> "It is the deed made to the purchaser actually "transferring the title of the parties to the suit, that "terminates the mortgagor's equity of redemption."
>
> Chicago, etc., R. R. *v.* Fosdick, 106 U. S. 71.

Even after foreclosure and after a perfect deed made, conveying title to the purchaser, the Alabama statutes give the mortgagor *two years* within which to redeem.

The record does not disclose *when* the Riverdale Cotton Mills obtained the deed from the Commissioner under the Georgia decree, even if that were effective to convey title to the Alabama lands. We submit that, under the well settled decisions of this Court and of the said Circuit Court that neither the *decree itself* nor the *Commissioner's* deed under such decree, in the Georgia Court, could *effectually* convey title or cut off the mortgagor's equity of redemption to the lands and property in Alabama.

The Supreme Court of the United States, in Carpenter *v.* Strange, 141 U. S., 87-106; 35; 640-6, speaking through Mr. Chief Justice FULLER, held as follows:

> "The real estate was situated in Tennessee and governed by the law of its *situs*, and while by means of its power over the person of a party a court of equity may in a *proper* case compel him to act in relation to property not within its jurisdiction, *its decree does not operate directly upon the property nor affect the title.* * * * *The Court has no inherent power, by the mere force of its decree, to annul a deed, or to* establish a title." (Hart *v.* Sansom, 110 U. S., 151, 155, 28; 101, 103.)
>
> "Hence, although in cases of *trust*, of *contract*, and of *fraud*, the jurisdiction of a court of chancery may be sustained over the *person*,* * * yet it does not follow that such a decree is in itself necessarily *binding upon the courts of the State where the land is situated.*"
>
> "By its terms *no* provision whatever was made for its enforcement against Mrs. Strange in respect of the real estate. *No conveyance was directed*, nor was there any attempt in any way to exert control over her in view of the conclusion that the Court announced. *Direct action upon the real estate was certainly not within the power of the Court*, and as it did *not* order Mrs. Strange to take any action with reference to it, and she took *none*, *the courts of Tennessee were not obliged to surrender jurisdiction to the courts of New York over real estate in Tennessee, exclusively subject to its law and jurisdiction.*"

Carpenter *v.* Strange, 141 U. S., 87-106, citing;
Story Confl. Laws, Sec. 543;
Wharton Confl. Laws, Secs. 288,289;
Watkins *v.* Holman, 41 U. S., 16 Pet., 25 (10:873);
Northern Indiana R. Co. *v.* Michigan Cent. R. Co., 56 U. S., 15 How., 233 (14:674);
Davis *v.* Headly, 22 N. J. Eq., 115;
Miller *v.* Birdsong, 7 Baxt., 531;
Cooley *v.* Scarlett, 38 Ill., 316;
Gardner *v.* Ogden, 22 N. Y., 327.

To the same effect, see also :

Watts *v.* Waddle, 6 Peters, 389 ;
Mercantile Trust Co. *v.* Kanawha & O. Ry. Co., 39 Fed., 339 ;
Lynde *v.* Columbus, C. & I. Ry. Co., 57 Fed., 993 ;
Farmers' L. & T. Co. *v.* Postal Tel. Co., 55 Conn., 334, 11 Atl. Rep., 184 ;
Pittsburg & State Line Ry. Co. *v.* Rothschild, 26 Am. & Eng. Ry. Cases, p. 50 (Advanced Case, Penn., 1886).

And, following the well settled adjudications of this Honorable Court, as announced *in re* Carpenter *v.* Strange, 141 U. S., 87, *supra*, and kindred cases cited, the Circuit Court of Appeals for the Fifth Circuit, has consistently maintained the same uniformity of decisions of this Court and those on the Circuit, in its decision :

In re "Guarantee Trust & Safe Deposit Co. *v.* Delta & Pine Land Co. *et al.*, 104 Fed. 5. (Decided May 30, 1900.)

Without quoting the text of the opinion covering an exhaustive review of many of the authorities cited and quoted hereinabove, we extract the following :

> "And it may be said that 'a sale made by a *special master*, under the direction of a court of chancery, *is not* a sale made by either of the *parties* to the litigation or under his direction. The master is a representative of the *court*, as a marshal or sheriff is in an action at law. He is not under the control of either party. He is not the agent of either to make the sales. (Mining Co. *v.* Mason, 145 U. S. 361, 362.) It will thus be seen that the decree in Blackburn *v.* Railroad Co. (C. C.), 3 Fed. 689,) did not operate directly upon the trustees or the railroad company, by requiring conveyances to be made by *them*, but partaking of the nature of a proceeding *in rem*, it acted immediately upon the *property*, and was to be executed through the instrumentality of independent

officers appointed by the court. A writ of assistance, issued by the court in Tennessee to put the purchaser at the sale made by the master in possession of the property, *would be wholly inoperative, because such process could have no extra-territorial effect.*" (Citing):

> Toland *v.* Sprague, 12 Pet. 300; 9 L. ed. 1093;
> Picquet *v.* Swan, 5 Mason, 40 Fed. Cas. No. 11,134;
> *Ex parte Graham*, 3 Wash. C. C. 456; Fed. Cas. 5,667;
>
> and other cases cited."

"Notwithstanding the want of power in a court of one State to deliver by its process the possession of land in another it is nevertheless a recognized and accepted doctrine that a court of equity, sitting in a State and having jurisdiction of the *person*, may decree a conveyance *by him* of land in another State, and may enforce the decree by process against the defendant."

> *Muller v. Dows*, 94 U. S. 449,24 L. ed. 207;
> Massie *v.* Watts, 6 Cranch, 148,3 L. ed. 181, etc.

"Where, however, it is sought by the *decree* to effect a transfer of the title to land lying within another jurisdiction, by directing its sale by a *Master*, who is *not* clothed with the title, the decree in such case operates upon the *thing*, and does *not* divest the title of the *Owner*; the master being, as we have seen, a mere representative of the court, not under the control of either party, nor the agent of either to make the sale. In the case last mentioned, the deed is simply *inoperative* to pass the title; for to judicially divest the title to real estate out of one person and place it in another, *the holder of the title* must be before the court, and the decree must operate upon the *person* by requiring *him* to make the conveyance.

"This principle is *elementary*, and should have special application to decrees rendered by the courts of one State authorizing the transfer of title to lands lying within the limits of another State." (104 Fed. p. 10.)

"*But*, it is claimed by counsel for the appellant, that *Muller* v. *Dows*, 94 U. S. 444, 24 L. ed. 207, has

overruled or modified the earlier cases decided by the Supreme Court.

"*In this view we are unable to concur.*

"The suit in that case was brought by the trustees named in the mortgage. The Chicago & Southwestern Railway Company was one of the defendants. A *part* of its railroad was in Missouri, and the mortgage which the bill sought to have foreclosed covered that part as well as the entire property covered by the mortgage, and directed the *Master*, who was ordered to make the sale, to execute a deed to the purchaser. *The Mortgagor was also directed to make a conveyance to the purchaser in further assurance.*"

"Upon appeal the decree was affirmed.

"It will be observed, that the railway extending into *two* States, was sold in its entirety; that the trustees were complainants in the suit seeking a sale of the property; and that the *Mortgagor* was required also to execute a deed to the purchaser. The Court seemed to lay stress upon the fact that the sale was made *at the instance of the trustees*, who notwithstanding the appeal, could also be directed by the trial court to *join in* a conveyance."

"In discussing the question, the Court (at p. 450, 94 U. S. and p. 209, 24 L. ed.), observed:

"'The *Mortgagors* here were within the jurisdiction of the Court. So were the Trustees of the mortgage. It was at the instance of the latter, the master was ordered to make the sale. The Court might have ordered the trustees to make it. The *Mortgagors*, who were foreclosed, were enjoined against claiming property after the master's sale, *and directed to make a deed in further assurance*, and the Court can direct the trustees to make a deed to the purchaser *in confirmation* of the sale. We cannot, therefore, declare void the decree which was made.'"

Thus, the Circuit Court of Appeals for the Fifth Circuit, after its exhaustive review of the uniform adjudications of this Court, distinctly and unanimously *declined to concur in* the contention of counsel in that case—and as urged by counsel

in this case—to the effect that the said *Muller* v. *Dows* case has "overruled or modified the earlier cases decided by the Supreme Court," but expressly held to the *contrary*.

Respecting the matter of "home precedents," or examples, it is noteworthy that, in framing the "form and terms" of the divers decrees of sale and of (conditional) confirmations, as entered by the Circuit Court in the case at bar, the *latter* appear to present the *only exception* or departure from the general rule established under the many and important adjudications heretofore had in the said court, both those preceding and those subsequent thereto.

In all railroad foreclosures recently had in the jurisdiction of the Circuit Court of the United States for the *Northern District of Georgia, ancillary* bills were filed in *every State* through which the road ran; decrees were taken on each of these ancillary bills, and *the mortgagor railroad companies were required to execute deeds*, as well as the Master Commissioner, and the purchaser was given the right to demand a deed from the *trustee* foreclosing the mortgage.

This was true in the Central Railroad foreclosure, Richmond and Danville foreclosure, Georgia Pacific foreclosure, Savannah and Western foreclosure, Marietta and North Georgia foreclosure, and Chattanooga, Rome and Columbus foreclosure, and notably in the case of the Eagle and Phenix Manufacturing Company foreclosure.

For a more complete review of all these and other precedents established by this and other Courts, and for the particular characteristics—differentiating the case of "Muller *v.* Dows" from the case at bar,—see our main briefs white cover, pp. 48–54, and blue cover, pp. 39–55.

We respectfully submit, that it is a well settled principle of law, that so long as the equity of redemption is not terminated, a purchaser or mortgagee in possession, who goes into possession, holds subject to be divested of his possession by a redemption; and that that may be accomplished, either by the mortgage debt being paid off, by accumulation of the

rents and profits by itself, or by that and additional money tendered by the mortgagor.

"Where redemption is allowed after a foreclosure sale, if the mortgagee purchases and enters into possession, he must account for the rents and profits."

Jones on Mortgages, Sec. 1118.

"If a mortgagee enters into possession under a defective foreclosure, he is in the position of a mortgagee in possession, and is entitled to the crops and other products of the land and is accountable for the rents and profits."

"An assignee stands in the place of his assignor in respect to the account, whether he be an assignee of the mortgage or of the equity of redemption."

Jones on Mortgages, Sec. 1119.

"After a mortgagee in possession has received payment of the debt, he really holds the property in trust for the mortgagor."

Jones on Mortgages, Sec. 1159.

"Under an illegal sale, an accounting is allowed in Alabama, on a bill for accounting and redemption."

Downs *v.* Hopkins, 65 Ala., 508.

"The remedy by the mortgagor is by bill in equity for an accounting and redemption."

Farris *v.* Houston, 78 Ala., 250.

"A mortgagee in possession by tenant or otherwise is accountable for the rent and bound to apply it to lessen the debt."

Kellogg *v.* Rockwell, 19 Conn. 446.

"Rents follow title, and the owner of the realty is the owner of the rent."

Wm. Grant, receiver, *v.* Buckner, 172 U. S. 237-8.

This entire contention on the part of the Respondents, which was raised in their 11th and 12th assignments of error on appeal from the decree of September 29, 1902, and which was ***sustained*** by the Circuit Court of Appeals, was passed over in the opinion of this Court, apparently because, al-

though covered by the briefs, the limit of time prevented much reference to it in the oral argument, which proceeded mainly on the questions of jurisdiction.

It is true that, in the statement of the case by Mr. Justice BREWER, in giving a summary of the ancillary bill, it is stated:

> "The bill sought to redeem the property described from the lien of the bonds and trust deed. On June 10th, 1901, this petitioner, a *corporation which had acquired all the title to the property described* in the trust deed passing under the foreclosure proceedings heinbefore refered to, filed in the Circuit Court for the Northern District of Georgia an ancillary bill to restrain the further prosecution of the suit in the State Court of Alabama. A temporary injunction was issued, which on final hearing was made perpetual."

It is respectfully submitted, however, that there is *absolutely no evidence or pleading* to justify the statement that the Riverdale Cotton Mills had acquired title or claimed to have acquired title to any of the Alabama lands, otherwise than through the deed claimed to have been received by it from the *Commissioner* under the *conditional* decree of October 15, 1898, in the Robinson suit; and that this statement of the court, which may be correct so far as any lands in Harris County, Georgia, may be concerned, is not correct in so far as the Alabama lands and property are concerned, if the operation of the principles heretofore laid down by this court, hereinbefore cited, control.

It is respectfully submitted, that in this preliminary statement of fact, this Court never intended to rule that, where the Circuit Court for the Northern District of Georgia did *not* decree conveyance from the mortgagor or trustee, but directed a *Commissioner* appointed by it to make conveyance, that such decree or such conveyance operates to convey title to lands in Alabama.

It is respectfully submitted, also, that the statement made by the Court above quoted, shows that the Court did not consider the fact that the decree of Sept. 29, 1902, did

not stop at enjoining the prosecution of any suit for redemption in the State Court of *Alabama*, or *other* court, but perpetually prevents respondents from even setting up such right to redeem even in the Circuit Court for the Northern District of *Georgia*.

In view of the premises, it is respectfully submitted, that the order affirming the decree of the Circuit Court, of Sept. 29, 1902, should be *modified* so as to allow the respondents, The Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, to set up by appropriate proceeding, in the Robinson suit, in the Circuit Court for the Northern District of Georgia, any right or redemption, they or either of them may have, without prejudice to the right of the Riverdale Cotton Mills to file its supplementary proceedings to require the mortgagor or trustee to make a deed conveying title to the lands in Alabama to it, and that the said Circuit Court adjudicate the rights of the parties as they may appear.

Even the dissenting Judge (PARDEE), in his opinion in the Circuit Court of Appeals, recognized the necessity and right to supplementary proceedings in the Circuit Court, to correct the decree as it now stands. He said:

> "There are some *other questions* raised in the assignments of error, the proper determination of which might require the *reversal* of the decree below, and a *remand* for further proceedings, but as my brethren insist on a dismissal of the bill for want of jurisdiction, it is not necessary to consider them." (Record p. 564.)

These Respondents respectfully pray, therefore, that an order may be made granting them a Rehearing of the argument in this case on a date to be appointed by this Court at the present term, for the purpose of presenting their claim of right to a modification of the said decree as aforesaid, or as the equities of the case may require, and upon such points as the court may direct; the issuance of the mandate mean-

while to be withheld till further order of this Honorable Court.

JOHN T. MORGAN,
MARION ERWIN,
JOHN M. CHILTON,
WILLIAM S. THORINGTON,
ROBERT P. SHICK,
Solicitors for Respondents.

I hereby certify that the foregoing application for rehearing is, in my opinion, based upon valid grounds, and I further certify that in my opinion, the decision of this Honorable Court, in this cause, is not in accordance with the law or with the facts as proven.

MARION ERWIN,
Solicitor for The Alabama & Georgia Manufacturing Company and The Huguley Manufacturing Company.

JOHN T. MORGAN,
JOHN M. CHILTON,
WILLIAM S. THORINGTON,
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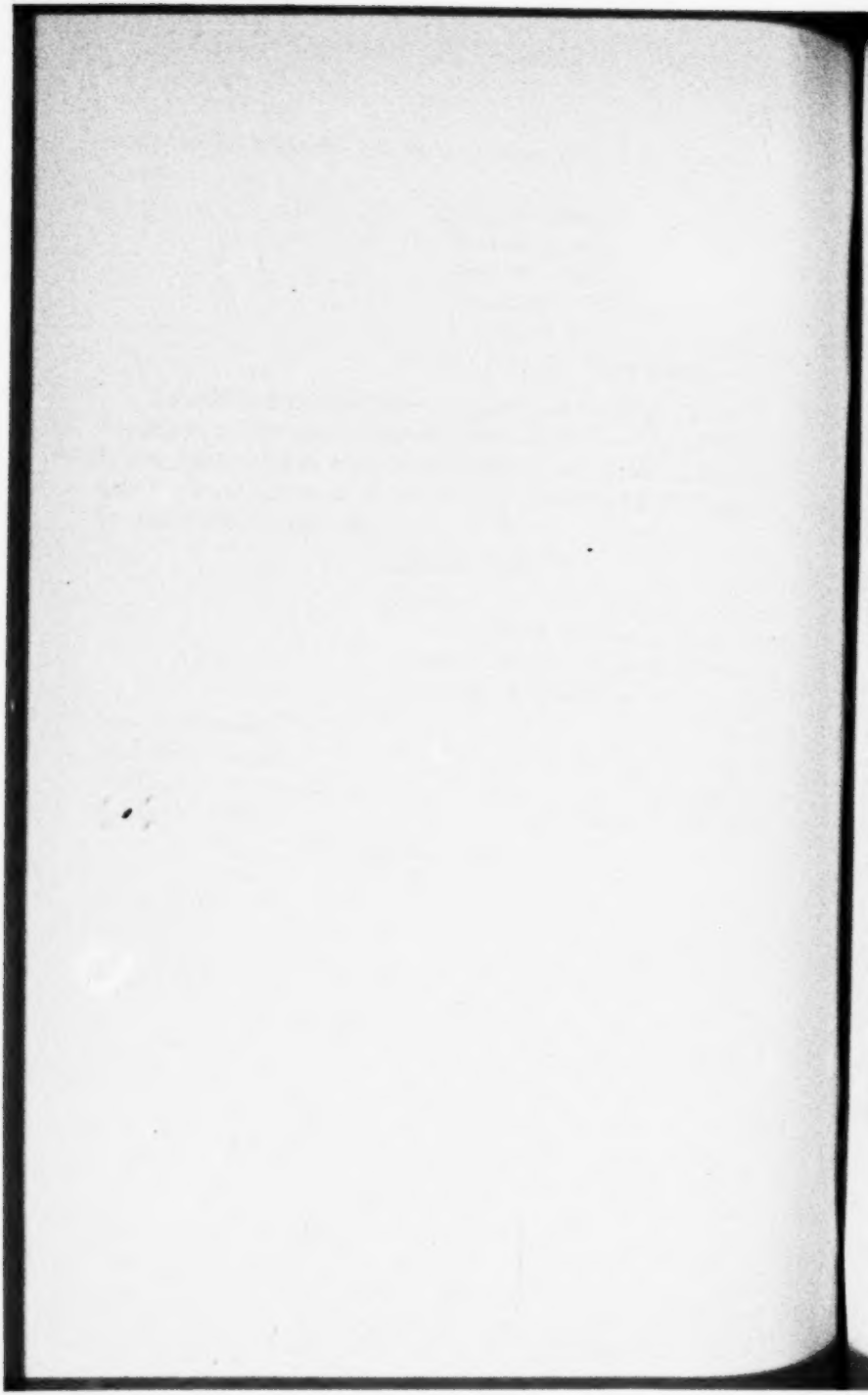

Supreme Court of the United States.

No. 194.—October Term, 1904.

Riverdale Cotton Mills, Petitioner,
vs.
The Alabama and Georgia Manufacturing Company and Huguley Manufacturing Company.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 8, 1905.]

On February 7, 1866, an act passed the Alabama legislature incorporating five persons named, their associates and successors, as "The Alabama and Georgia Manufacturing Company." On March 21, 1866, the Georgia legislature incorporated the same individuals under the same name, "The Alabama and Georgia Manufacturing Company." The purposes of the two corporations were identical. Among others, the use of the water power of the Chattahooche River, the boundary line between Alabama and Georgia, was contemplated, and the Georgia act specifically authorized the corporation "to carry on any of the business and manufactures, or any branch or branches of the same, in this State that said charter authorizes them to engage in or carry on in the State of Alabama." On January 2, 1884, the Alabama and Georgia Manufacturing Company executed a trust deed, conveying property, situate partly in Georgia and partly in Alabama, but practically only a single plant, to J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees, to secure the payment of sixty-five thousand dollars of the mortgage bonds. There is nothing in the trust deed to indicate whether it was executed by the Alabama corporation or the Georgia corporation, except it be the mention of West Point, Georgia, as the location of the company's office.

On February 28, 1890, the Huguley Manufacturing Company was incorporated under the laws of the State of Alabama, and subsequently acquired by purchase all the property included within the trust deed. Default having been made in the payment of interest on the bonds, Robinson, one of the trustees and a citizen of Alabama, on January 21, 1891, filed a bill of foreclosure in the Circuit Court of the United States for the Northern District of Georgia against the Alabama and Georgia Manufacturing Company, the Huguley Manufacturing Company, each of which was alleged to have been created under the laws of the State of Georgia and a resident and citizen of that State, and against W. T. Huguley, also averred to be a citizen of the State of Georgia, and all three residing within the Northern District of Georgia. In the bill the plaintiff alleged that Yancey, one of the trustees, was dead; that Huguley, the other trustee,

was interested adversely to the bondholders, and that plaintiff was, therefore, the only one authorized to bring the suit. A vast amount of litigation concerning the property has followed the commencement of this foreclosure suit, as partially appears from the following references: *Robinson* v. *Alabama & G. Mfg. Co.*, 48 Fed. Rep. 12 (1891); Ibid., 51 Fed. Rep. 268 (1892); *Alabama & G. Mfg. Co.* v. *Robinson*, 56 Fed. Rep. 690 (1893); *Robinson* v. *Alabama & G. Mfg. Co.*, 67 Fed. Rep. 189 (1894); *Alabama & G. Mfg. Co.* v. *Robinson*, 72 Fed. Rep. 708 (1896); *Robinson* v. *Alabama & G. Mfg. Co.*, 89 Fed. Rep. 218 (1898); *Huguley Mfg. Co.* v. *Galeton Cotton Mills*, 94 Fed. Rep. 269 (1899); Ibid., 175 U. S. 726 (1899); *Riverdale Cotton Mills* v. *Alabama & G. Mfg. Co.*, 111 Fed. Rep. 431 (1901); *Huguley Mfg. Co.* v. *Galeton Cotton Mills*, 184 U. S. 290 (1902); *In re The Huguley Mfg. Co.*, 184 U. S. 297 (1902); *Alabama & G. Mfg. Co.* v. *Riverdale Cotton Mills*, 127 Fed. Rep. 497 (1904).

On May 2, 1901, the Alabama and Georgia Manufacturing Company of Alabama and the Huguley Manufacturing Company of the same State filed their bill in the Chancery Court of the First District of the Northeastern Division of the State of Alabama, in which they alleged that the plaintiff, the Alabama and Georgia Manufacturing Company, was at one time the owner of the property included within the trust deed hereinbefore referred to; that it executed that deed to the parties named as trustees; that a foreclosure suit was commenced by one of the trustees, J. J. Robinson, in the United States Circuit Court for the Northern District of Georgia; that the parties named as defendants therein were the Alabama and Georgia Manufacturing Company, alleged to be a corporation organized under the laws of Georgia, the said Huguley Manufacturing Company, and W. T. Huguley. The bill set out with some detail the proceedings in the Circuit Court of Georgia, but alleged that they were null and void so far as concerns the title of the plaintiffs in that suit. The bill sought to redeem the property described from the lien of the bonds and trust deed. On June 10, 1891, this petitioner, a corporation which had acquired all the title to the property described in the trust deed passing under the foreclosure proceedings hereinbefore referred to, filed in the Circuit Court for the Northern District of Georgia an ancillary bill to restrain the further prosecution of the suit in the State court in Alabama. A temporary injunction was issued, which on final hearing was made perpetual. Thereupon defendants took an appeal to the Circuit Court of Appeals for the Fifth Circuit, which reversed the decree of the Circuit Court and ordered that the case be remanded to that court with instructions to dismiss the bill. The case was then brought here on certiorari.

Mr. Justice BREWER delivered the opinion of the Court.

For over ten years, from January 21, 1891, the date of the filing of the original bill, litigation was carried on in the Circuit Court of the United

States for the Northern District of Georgia, and in appellate courts, in the foreclosure of a trust deed executed by the Alabama and Georgia Manufacturing Company. In the course of that litigation decrees were entered and reversed, sales were made and set aside, possession of property was transferred and retransferred, accountings had as to the proceeds of property in possession, and when it seemed that at last litigation was at an end, the foreclosure consummated and the title established in the purchaser, we are told that it all amounted to nothing; that parties, lawyers and courts have been spending their time and labor in simply beating the air, the title to the property conveyed by the trust deed being exactly where it was before the litigation commenced, and the party which had acquired possession by that litigation subject to an obligation to account as a mortgagee in possession.

Upon what is this contention based? The respondents say that the property conveyed by the trust deed was all in Alabama, although the deed recites that part of it was in Georgia; that it originally belonged to the Alabama company; that that company executed the trust deed, although the resolution incorporated in the trust deed purports to have been passed at a meeting of the directors held at the office of the company in West Point, Georgia; that the Alabama company was not made a party to the foreclosure proceedings and could not have been, because the plaintiff was a citizen of Alabama, and making the Alabama company a defendant would have ousted the court of jurisdiction; that the subsequent owner of the property, another Alabama company, was also not made a party to those proceedings, and that therefore they were *res inter alios acta*, and in no way binding upon either Alabama company. It is also insisted by the respondents that the so-called ancillary bill filed by the petitioner was not in any sense of the term an ancillary but in fact an original bill, and that under section 720, Rev. Stats., the Federal court had no power to restrain the further proceedings in the State Chancery Court.

Prima facie, the United States Circuit Court had jurisdiction of the foreclosure bill. Diverse citizenship was alleged and admitted, and the relief sought was the foreclosure of a trust deed covering property partially in Georgia and partially in Alabama. The bill in the State court challenged the decree in the United States Circuit Court, denied its efficacy to transfer title, on the ground that the Alabama and Georgia Manufacturing Company (the grantor in the trust deed and the original owner of the property) and the Huguley Manufacturing Company (a purchaser and subsequent owner) were both corporations of Alabama and citizens of the same State with the plaintiff, whereby a case was presented of which the Federal courts could not take jurisdiction. The specific allegations were these:

"That a corporation, known as the 'Alabama and Georgia Manufacturing Company,' alleged to be a corporation organized under the laws of Georgia only, and said Huguley Manufacturing Company, together with the said W. T. Huguley, were the sole defendants to said bill, said W. T. Huguley being made defendant as co-trustee, alleged to be interested adversely. The Alabama and Georgia Manufacturing Company, originally chartered and organized as a corporation under said act of the general assembly of the State of Alabama, never has been made a defendant thereto, and never appeared as a party to said cause, the president of said corporation, to wit, W. H. Huguley, himself likewise a citizen and resident of the county of Chambers, State of Alabama, never having been served with notice either of said alleged default of interest, as expressly required under the terms of the trust deed, or notice of said suit of foreclosure against said Alabama and Georgia Manufacturing Company. No attempt was made, by either direct or ancillary proceedings, to subject the property lying in the State of Alabama to this suit. A portion of the property was erroneously described in the said mortgage as lying within the county of Harris, in the State of Georgia, while the orators aver that all of said property was and is situated within the county of Chambers, in the State of Alabama.

"The property was not advertised in the State of Alabama, nor was any sale or pretense of sale conducted in said State."

And again—

"The Huguley Manufacturing Company, a corporation, avers that it purchased and acquired all the property hereinabove described subject to said mortgage, and is now the owner of the same, subject to said mortgage."

The answer filed to the ancillary bill alleges that both plaintiffs in the State court were corporations chartered under the laws of Alabama. It further states:

"That while said Alabama and Georgia Manufacturing Co. may have been incorporated in the State of Georgia, it was also incorporated in the State of Alabama prior to the incorporation in the State of Georgia. And these respondents aver that there never was, by the action of the State of Georgia and Alabama, any merger or consolidation of said two corporations. They therefore, allege that said Alabama and Georgia Manufacturing Company, incorporated under the laws of Alabama, was a distinct and separate legal entity from the Alabama and Georgia Manufacturing Company incorporated under the laws of Georgia.

* * * * * *

"That while said Huguley Manufacturing Company was alleged in said bill to have been incorporated under the laws of Georgia, the defendants aver that as a matter of fact it was never so incorporated."

It also avers that the property is all in the State of Alabama. The case was submitted on bill and answer.

It thus appears that a party carries on a litigation in a Federal court on its merits, and when beaten in that court goes into a State court and claims that, by reason of his own untruthful admission of citizenship, the

Federal court assumed a jurisdiction which in fact it could not take, and that all the proceedings in that court must go for naught. Under such circumstances there can be no doubt that the Federal court may inquire and determine whether its proceedings were a nullity, and such inquiry is not an original proceeding, but ancillary to those which have already been had. In other words, a Federal court, exercising a jurisdiction apparently belonging to it, may thereafter, by ancillary suit, inquire whether that jurisdiction in fact existed. It may protect the title which it has decreed as against every one a party to the original suit and prevent that party from relitigating the questions of right which have already been determined. *French, Trustee,* v. *Hay,* 22 Wall. 250; *Cole* v. *Cunningham,* 133 U. S. 107; *Root* v. *Woolworth,* 150 U. S. 401. In this case, on page 410, it was said:

"It is well settled that a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments, which remain unreversed, when the subject-matter and the parties are the same in both proceedings. The general rule upon the subject is thus stated in Story's Equity Pleading (9th ed) sec. 338: 'A supplemental bill may also be filed, as well after as before a decree; and the bill, if after a decree, may be either in aid of the decree, that it may be carried fully into execution.' . . . The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or writs of assistance in order to avoid the relitigation of questions once settled between the same parties, is well settled. Story's Eq. Jur. sec. 959; *Kershaw* v. *Thompson,* 4 John. Ch. 609, 612; *Schenck* v. *Conover,* 13 N. J. Eq. 220; *Buffum's Case,* 13 N. H. 14; *Sheperd* v. *Towgood,* Tur. & Rus. 379; *Davis* v. *Black,* 6 Beav. 393. In *Kershaw* v. *Thompson,* the authorities are fully reviewed by Chancellor Kent, and need not be re-examined here."

See also *Julian* v. *Central Trust Company,* 193 U. S. 93, which is very much in point. There, after a suit in a Federal court for foreclosure of a mortgage resulting in decree, sale, confirmation and delivery of possession to the purchaser, a State court attempted to subject the property to a judgment rendered in that court against the mortgagor on a cause of action arising subsequently to the delivery of possession under the foreclosure proceedings. And it was held within the competency of the Federal court to restrain the action in the State court in order to protect the title it had conveyed by the foreclosure proceedings. In the opinion it was said (p. 112):

"If the sheriff is allowed to sell the very property conveyed by the Federal decree, such action has the effect to annul and set it aside, because in the view of the State court it was ineffectual to pass the title to the purchaser. In such case we are of opinion that a supplemental bill may be filed in the original suit with a view to protecting the prior jurisdiction of the Federal court and to render effectual its decree. *Central Trust Company of New York* v. *St. Louis, Arkansas &c. Railroad Co.,* 59 Fed. Rep. 385; *Fidelity Ins. Trust & Safe Deposit Co.* v. *Norfolk & W. R. R. Co.,* 88

Fed. Rep. 815; *State Trust Co.* v. *Kansas City &c. R. R. Co.*, 110 Fed. Rep. 10.

"In such cases where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding sec. 720 Rev. Stat., restrain all proceedings in a State court which would have the effect of defeating or impairing its jurisdiction. *Sharon* v. *Terry*, 36 Fed. Rep. 337, per Mr. Justice Field; *French* v. *Hay*, 22 Wall. 250; *Deitzsch* v. *Huidekoper*, 103 U. S. 494."

It must be borne in mind in this connection that the Huguley Manufacturing Company was made a party defendant and appeared in the original foreclosure suit, and also that it had purchased the property and owned it subject to the trust deed. So the bill in the State court specifically avers, and the record of the proceedings in the foreclosure suit shows that it took an active part in the litigation. It admitted in that litigation that it was a citizen of Georgia. It now goes into a State court and, averring that it is a citizen of Alabama, the State of which the plaintiff was a citizen, contends that the United States court in Georgia had no jurisdiction; but having been in that United States court litigating the case on its merits and its rights there determined, that court has power to protect its decree as against any action which such litigant may take in any other court.

It must also be remembered that the trust deed described the property conveyed as situated partly in Georgia and partly in Alabama. The Federal court sitting in Georgia had jurisdiction to foreclose that trust deed. *Muller* v. *Dows*, 94 U. S. 444. Even if there were errors or irregularities in the proceedings they would not affect the matter of jurisdiction, and as those proceedings have been sustained on appeal we may assume that they were free from errors.

Where parties litigate in a Federal court, whose jurisdiction is invoked on the ground of diverse citizenship, and that diverse citizenship is alleged and admitted, the judgment or decree which is entered is conclusive and cannot be upset by either of them in any other tribunal on the mere ground that there was in fact no diverse citizenship. *Skillern's Executors* v. *May's Executors*, 6 Cranch, 267; *M'Cormick* v. *Sullivant*, 10 Wheat. 192; *Hancock* v. *Holbrook*, 119 U. S. 586. In *Des Moines Navigation Company* v. *Iowa Homestead Company*, 123 U. S. 552, 557, we said:

"It was settled by this court, at a very early day, that, although the judgments and decrees of the Circuit Courts might be erroneous, if the records failed to show the facts on which the jurisdiction of the court rested, such as that the plaintiffs were citizens of different States from the defendants, yet that they were not nullities, and would bind the parties until reversed or otherwise set aside."

In *Dowell* v. *Applegate*, 152 U. S. 327, the validity of a decree rendered by a Federal court was challenged on the ground of a want of jurisdiction. In the opinion the question was thus stated (p. 337):

"If the Federal court erred in assuming or retaining jurisdiction of Dowell's suit—a question not necessary to be examined—would it follow that its final decree, being unmodified and unreversed, can be treated as a nullity when assailed collaterally by one who was a party to the suit in which it was rendered?"

And after quotations from several authorities the conclusion was reached (p. 340):

"This disposes of the first objection urged against the decree in the Federal court under which Dowell purchased. That decree cannot be treated, in this suit, as void for want of jurisdiction."

See also *Evers* v. *Watson*, 156 U. S. 527.

Some of these cases, as appears from the quotations, go to the extent of holding that, although on the face of the record, jurisdiction does not appear, yet the judgments or decrees are binding upon the parties thereto and cannot be assailed collaterally. *A fortiori*, must it be true that when on the face of the record jurisdiction appears the judgment or decree must be held conclusive against a collateral attack by either of the parties thereto. The Huguley Manufacturing Company was, as is conceded in these ancillary proceedings, a party to the original litigation, and cannot now be permitted to challenge the jurisdiction of the Federal court on the ground that its admission of citizenship was an error, and that a correct statement would have disclosed a lack of jurisdiction.

As appears from the record, the Huguley Manufacturing Company was the owner of the equity of redemption at the time the foreclosure suit was instituted. It, therefore, was unnecessary to make the original grantor in the trust deed a party to the litigation. All that could be accomplished by its presence would be a decree putting at an end all question of its interest, and, possibly, if a sale did not pay the debt, a judgment over for the deficiency. But neither of these results would affect the jurisdiction of the court, so far as the owner of the equity of redemption is concerned, or impede the transfer of the title by foreclosure and sale to the purchaser.

Under the averments of the ancillary bill and answer it must be accepted that there were two corporations under the same name, the Alabama and Georgia Manufacturing Company, one chartered in Alabama, and the other in Georgia. It is doubtless true that, for the purposes of jurisdiction in the Federal courts, these corporations are deemed to be citizens of the States in which they were organized. It is also true that there was no formal merger of the two corporations into one; that they remained in law two separate legal persons, and that each was entitled to corresponding rights. But courts will sometimes look beyond the formal and corporate differences. Especially is this true of courts of equity. Substantial rights will be regarded rather than the mere matter of organization. *Lehigh Mining & Manufacturing Company* v. *Kelly*, 160 U. S. 327, illus-

trates this. There it appeared that the Virginia Coal and Iron Company was a corporation organized under the laws of Virginia, and therefore a citizen of that State; that it claimed title to certain lands in Virginia in the possession of the defendant, also a citizen of Virginia. There being no diversity of citizenship, an action could be maintained only in a court of the State. To avoid this and to place the litigation in the Federal court the stockholders of the coal and iron company organized under the laws of Pennsylvania the Lehigh Mining and Manufacturing Company. The former company thereupon conveyed all its rights to the latter, which brought its action for the recovery of the property in the United States Circuit Court for the District of Virginia. While it was conceded that the purpose with which a party makes a conveyance does not affect the title of his grantee, and while it was not doubted that the two corporations were separate entities, yet it was also held that, inasmuch as the stockholders in each were the same, and the organization of the Pennsylvania company was only for the purpose of getting the litigation into the Federal court, it was a fraud on the jurisdiction of that court, and its order dismissing the action for want of jurisdiction was affirmed. It was said in the opinion (p. 339:)

"The arrangement by which, without any valuable consideration, the stockholders of the Virginia corporation organized a Pennsylvania corporation and conveyed these lands to the new corporation for the express purpose—*and no other purpose is stated or suggested*—of creating a case for the Federal court, must be regarded as a mere device to give jurisdiction to a Circuit Court of the United States and as being, in law, a fraud upon that court, as well as a wrong to the defendants. Such a device cannot receive our sanction. The court below properly declined to take cognizance of the case."

In the case before us there were also two corporations—distinct legal entities—yet bearing the same name, the Alabama and Georgia Manufacturing Company. It may well be doubted whether any injustice has been done to the Alabama company by the long litigation. In the brief of one of the counsel for respondents, after stating the organization of the Alabama company, it is said:

"In order to carry out the general plans and purposes of the incorporators and organizers of the said *Alabama* company, thus already organized and established, it was deemed necessary and important that these same original incorporators and organizers of the said Alabama corporation and their successors should control the water rights of the Chattahooche River, not only through the riparian rights already granted them on the western or Alabama side of the river by the State of Alabama, but through those of the State of Georgia on the *eastern* side of the river as well, *i. e.*, at the point on the eastern bank opposite where their manufacturing plant in Alabama had already been located. These incorporators had in view the then purpose of utilizing, if not immediately, at least at some future

time, the recognized fine water power of the intervening Chattahoochee River, by the proposed acquisition of other lands on the eastern or Georgia side of the river, and the erection thereon of another *independent* manufacturing plant, and in such event, of using Columbus, or La Grange, Georgia, for *its* offices and shipping points. To that end the said incorporators did not elect to ask the legislature of Georgia for any express statutory license authorizing the *pre-existing Alabama* company to exercise in Georgia the same powers and rights which had been given it by the parent State of its creation (Alabama), *i. e.*, that it be '*domesticated*' in Georgia by the laws of that State, but the application was for the creation of a *separate* and *independent* corporation under the same name; and on March 21, 1866, 'The Alabama and Georgia Manufacturing Company,' as a second, distinctly independent corporation, was granted a charter by the legislature of the State of Georgia.'"

Whatever may have been within the scope of the ulterior purpose of the Georgia incorporation, the immediate purpose was the development of a single plant, and that purpose was carried into effect. By the charters the office of the Alabama company was located in Alabama and that of the Georgia company in Georgia. When the trust deed was executed it was executed in the name which was common to both corporations, but in pursuance of resolutions passed at an office in Georgia. It would be unjust to impute to these incorporators a design to mislead the holders of the indebtedness of the company by giving to them a security which rested alone upon the inconsiderable fraction of property then located in Georgia, when, on the face of the instrument, it purported to convey the entire plant. Evidently the proceedings were had on the supposition that there was but a single entity. That entity was indebted, and it gave the trust deed as security therefor. When the foreclosure suit was filed it would be also an unjust imputatation to suppose that the owners of the property carried on the litigation for years, knowing that the proper parties were not present in court and that the outcome of that litigation meant nothing. Evidently this defence, springing from the existence of two corporations, was an afterthought, when all other resources had failed, and equity may well say that to sustain the present contention would give judicial sanction to inexcusable trifling with courts. It is always to be understood that Federal tribunals are not moot courts, and that parties having substantial rights must when brought before those tribunals present those rights or may lose them.

The judgment of the Court of Appeals is reversed and that of the Circuit Court is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.